SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

No. 281.

FREDERICK KRAMER, ASSIGNEE OF ISAAC COHN, A BANKRUPT, APPELLANT,

vs.

ISAAC COHN AND M. S. COHN.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF ARKANSAS.

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1 In the District Court of the United States for the Western District of Arkansas. In Chancery.

Pleas and proceedings before the Honorable Isaac C. Parker, judge of the district court of the United States for the western district of Arkansas, in the case of—

FREDERICK KRAMER, as Assignee of the Estate of Isaac Cohn, a Bankrupt, Complainant,

vs.

ISAAC COHN and M. S. COHN, Defendants.

Bill in Equity.

Cohn and Cohn and Th's H. Barnes, for complainant; Clendening and Sandels and Duval and Cravens, for defendants.

2 UNITED STATES OF AMERICA, *Eastern District of Arkansas:*

Be it remembered that at a district court of the United States of America in and for the eastern district of Arkansas, begun and holden on Monday, the 7th day of April, A. D. 1879, at the United States court-room, in the city of Little Rock, Arkansas, the Honorable Henry C. Caldwell, judge, presiding, and holding said court, the following proceedings were had, to wit, on September 13th, 1879:

Transcript of Circuit Court, Eastern District. Appointment of Assignee.

In the matter of ISAAC COHN, Bankrupt.

And now on this day, the court being well and sufficiently advised respecting the matters and things, answering upon the demurrer of the bankrupt, Isaac Cohn, to the petition of Lehman, Abraham & Co., creditors of said bankrupt, to have said bankrupt's discharge heretofore granted herein set aside, and for the appointment of an assignee to administer upon assetts heretofore unadministered herein, is of the opinion that, as to so much of said petition as relates to the setting aside of said discharge the said demurrer ought to be sustained, but as to the other matters contained in said petition said demurrer ought to be overruled. It is, therefore, considered,
3 ordered, and adjudged that as to so much of the petition as refers to said discharge the said demurrer be, and is hereby, sustained, and that as to so much of said petition the same be, and the same is hereby, dismissed as against said bankrupt.

And it is further considered and ordered that, as to so much of said petition as relates to the appointment of an assignee, the said demurrer be, and the same is hereby, overruled, and that Frederick Kramer be, and he is hereby, appointed assignee herein, to take possession and administer upon any assets which may be found to belong to the estate of said Isaac Cohn, bankrupt, so far as the same have not heretofore been administered upon herein.

Clerk's Certificate.

Eastern District of Arkansas.

I, Ralph L. Goodrich, clerk of the district court of the United States for the eastern district of Arkansas, in the eighth circuit, hereby certify that the foregoing writing annexed to this certificate is a true, correct, and compared copy of the original remaining of record in my office.

In witness whereof I have hereunto set my hand and af-
4 fixed the seal of said court, this fourth day of October, in the year of our Lord one thousand eight hundred and seventy-nine, and of the Independence of the United States of America the one hundred and fourth.

[SEAL.] RALPH L. GOODRICH, *Clerk.*

5 *Opening Order. August Term,* 1879.

Be it remembered that at a regular term of the district court of the United States for the western district of Arkansas, begun and held at the United States court-house at Fort Smith, in said district, on the 4th day of August, A. D. 1879, it being the first Monday in said month, and the day appointed by law for the holding of said court—present and presiding, the Honorable Isaac C. Parker, judge of said court; also William H. H. Clayton, Esq., United States district attorney; Daniel P. Upham, Esq., marshal of said district, and Stephen Wheeler, Esq., clerk of said court—when the following proceedings were had, on the chancery side of said court, to wit:

6 *Filing of Bill Praying for Temporary Restraining Order.*

In the District Court of the United States for the Western District of Arkansas. August Term, 1879.

WEDNESDAY MORNING, 9 O'CLOCK.

Court met pursuant to adjournment.

Present: The Honorable Isaac C. Parker, judge of the district court of the United States for the western district of Arkansas.

FREDERICK KRAMER, as Assignee in Bankruptcy of Isaac Cohn, as Bankrupt,

vs.

ISAAC COHN and M. S. COHN.

And now, on this day, comes the complainant, Frederick Kramer, as assignee in bankruptcy of Isaac Cohn, a bankrupt, by Thomas H. Barnes, Esq., and *and* Mess. Cohn and Cohn, his solicitors, and files his complaint in equity and affidavits, praying, for causes therein set forth, for a temporary restraining order against said defendants, Isaac Cohn and M. S. Cohn, their agents and representatives, in manner and form as set out in the prayer of said bill, and also files a notice to said defendants of the said application
7 for said restraining order, which appears to have been duly served on said Isaac Cohn by personal service and upon the

said M. S. Cohn, said person being absent from the district, by delivering a copy thereof to the said Isaac Cohn, and comes the said Isaac Cohn, by Mess. Clendening and Sandels, his solicitors, and, the said cause being submitted upon said bill of complaint and affidavits and certain records of the U. S. district court for the eastern district of Arkansas, after the argument of counsel, the court takes time of considering its judgment herein.

And now, the court being well and sufficiently advised in the premises, is of opinion that a temporary restraining order should be granted herein, as prayed in said bill.

It is therefore considered, ordered, and decreed that the said Isaac Cohn and M. S. Cohn, their agents and representatives, and all persons acting for or under them, be, and they are hereby, severally restrained from disposing or attempting to dispose of, or interfering with or attempting to interfere with, a certain stock of goods and merchandise or any part thereof now kept and being in a certain storehouse known as "Marble hall," on the east side of Gar-
8 rison avenue, in the city of Fort Smith, in the district where-in this court is held, now used in a bussines- carried on in said place purporting to be in the name of the said M. S. Cohn, being the same set forth in the bill of complaint.

It is further ordered that this order take no effect until the said complainant file a good and sufficient bond herein, to be approved by the clerk of this court, to the said defendants, in the penal sum of twenty-five thousand dollars, to secure the said defendants in any damages they may sustain by virtue of this order in the event it shall not be sustained upon the final hearing of this cause, or in event that said injunction should be desolved, at any time prior to the final hearing of said cause.

And by consent of complainants it is further ordered that this restraining order shall not be taken to apply to any notes, bills of exchange, or other choses in action belonging to said defendants.

9 *Original Bill.*

In the District Court of the United States for the Western District of Arkansas.

FREDERICK KRAMER, as Assignee in Bankruptcy of the Estate of Isaac Cohn, a Bankrupt,

vs.

ISAAC COHN and M. S. COHN.

Bill in equity.

To the Honorable Isaac C. Parker, judge of said court:

The complainant says that on or about the 24th day of April, 1877, the defendant, Isaac Cohn, was, upon the petition of his creditors adjudged by this honorable court a bankrupt; that as such bankrupt he filed schedules of his assets and liabilities in proper form; that on the 22d day of June, 1877, W. B. Hagband was appointed assignee of said estate; that there were no assets of said estate reported in said

schedules to be administered upon; that the said assignee obtained his discharge from said office on or about the 30th of July, 1877; that since then until the 13th of September, 1879, there was no assignee of said estate, and that said bankrupt obtained his discharge in bankruptcy on or about the 5th day of August, 1877.

He further says that for many years before and up to the
10 24th day of April, 1877, the said Isaac Cohn had been doing, at Pine Bluff, Arkansas, a large business, consisting of dry goods, clothing, boots and shoes, hats and caps, notions, gents' furnishing goods, and other merchandise peculiar to a business of general merchandise, in which said business the said defendant, M. S. Cohn, was a clerk.

That a short time before commencemeut of proceedings, as aforesaid, against said bankrupt, a fire occurred in his place at Pine Bluff, by virtue of which bankrupt falsely claimed and pretended that his entire stock, books of account, and avails were destroyed, and upon that plea procured some of his creditors, as complainant is informed and believes, to file a petition in bankruptcy against him as aforesaid, thereby hoping and intending to relieve himself from payment of his then outstanding indebtedness, which said bankrupt's schedules show at that time to have equalled nineteen thousand six hundred and ninety-five dollars.

That not exceeding two months before the date of filing this complaint certain of the creditors of said bankrupt, through their agent, ascertained that the representations and pretence of said bankrupt, to the effect that his entire assets were destroyed, were fabricated and false; that before the occurance of the said fire the said defendant, Isaac Cohn, removed large quantities of goods to Watson, Arkansas, and transmitted to his father, in Europe, large sums of money, aggregating over six thousand dollars; that said goods were placed in custody of one A. Boschwitz, as complain-
11 ant is informed and believes, at said town of Watson, and that said goods and said money remained in the hands of said parties until after said defendant's discharge in bankruptcy, when, as complainant is informed and charges the truth to be, said defendant caused said assets to be transmitted to him, with which complainant is informed and believes the said bankrupt opened a business at Fort Smith, in said State of Arkansas, in the name of the said M. S. Cohn, his former clerk, who is also said defendant's cousin, and in addition to said assets the said bankrupt before said fire took from the building wherein said store was situated in Pine Bluff his books of account, as complainant is informed and believes, and collected and appropriated a large amount of the accounts herein set forth, even during the rendency of said bankruptcy proceedings, which he also, complainant charges, invested in the said business at Fort Smith, all of which said bankrupt, in disregard of his oath and the order of court in bankruptcy, kept and retained from his creditors in bankruptcy.

And complainant charges that the fire aforesaid was one of a series of acts contemplated, connived at, and carried out by and between the said Isaac Cohn and M. S. Cohn, for the purpose of defraud-

ing the said creditors of the said bankrupt, and that the stock at Fort Smith hereinafter described is the property so kept back, with its natural increase.

That said Isaac Cohn is now carrying on said business so stated at Fort Smith in the name of the said M. S. Cohn, but complainant avers the same is owned, controlled, and carried on by the said
12 Isaac Cohn, and is the property kept back by the said defendant from his creditors in bankruptcy, with the increase thereof, which said business consists of a stock of goods composed of dry goods, boots and shoes, hats and caps, notions, furnishing goods, and other merchandise usually kept in a general merchandise business, on the east side of Garrison avenue, in said city, and out of which said business the said defendant, Isaac Cohn, is daily selling off goods forming the stock thereof.

That complainant was, by the order of this honorable court, on the — day of September, 1879, appointed assignee of said bankrupt's estate; that he was not, nor have any of the creditors of said bankrupt until a short time next before the bringing of this suit, not exceeding twelve months.

And complainant avers that the said M. S. Cohn does not reside in the State of Arkansas, but resides in the city of St. Louis, State of Missouri.

The premises considered the complainant prays for an injunction to restrain the said Isaac Cohn or M. S. Cohn from selling or attempting to sell, or interfering with or attempting to interfere with, the stock of goods as aforesaid in said store and business done under the name of the said M. S. Cohn at said city of Fort Smith, on the east side of Garrison street, in the said city, and that their agents and representatives be restrained from so doing; that a receiver be appointed to take charge of and manage said business until the further order of the court; that said defendants answer hereto, and that
13 Isaac Cohn account for the goods and moneys so kept back and the increase thereof; that on the failure so to answer and account a decree go divesting all ownership in said stock out of said bankrupt and said M. S. Cohn, and vesting the same to complainant, and that the usual orders for the deposition of said stock be made, and for process of law and other proper relief.

THOS. H. BARNES AND COHN AND COHN,
Solicitors for Complainant.

14 *Setting Aside Degree Pro Confesso.*

November Term, 1879.

FRIDAY MORNING, 8½ O'CLOCK, *November 14th*, 1879.

Court met pursuant to adjournment. Present: The Honorable Isaac C. Parker, judge of the district court of the United States for the western district of Arkansas.

FREDERICK KRAMER, Assignee, &c.,
vs.
ISAAC COHN and M. S. COHN.

Bill in equity.

On this day come the said complainant, by Thomas H. Barnes, Esq., his solicitor, and the said defendant, Isaac Cohn, by Clendening and Sandels, and Duvall and Cravens, his solicitors, and files his motion in writing and under oath to set aside the decree *pro confesso* entered against him, entered in the order-book on November 10th, 1879, and to enter his appearance, and permit him to file his answer to the complainant's complaint.

On consideration whereof it is ordered by the court here that said order, taken as confessed against said defendant, be set aside and vacated, and that the appearance of said defendant Isaac
15 Cohn be entered as of the rule day in November, and leave be given him to file his said answer, and the proper entries be made in the order-book.

16 *Filing of Answers of Def'ts to Bill of Complainant.*

November Term, 1879.

FRIDAY MORNING, 8½ O'CLOCK, *November 14th*, 1879.

Court [met] pursuant to adjournment. Present: The Honorable Isaac C. Parker, judge of the district court of the United States for the western district of Arkansas.

FREDERICK KRAMER, Assignee, &c.,
vs.
ISAAC COHN and M. S. COHN.

Bill in equity.

On this day comes the said complainant, by his solicitor, Thos. H. Barnes, Esq., and the defendants, by Clendening and Sandels and Duval and Cravens, their solicitors, and the said defendants, by leave of the court, filed their separate answers to the said complainant's complaint, and at the same time the said defendants filed their motion in writing for reasons therein contained for a dissolution of the injunction heretofore granted by this court, and also filed sundry affidavits in support of said motion, which said motion is set down for hearing on November 20th, 1879.

17 *Separate Answer of M. S. Cohn.*

In the District Court of the United States for the Western District of Arkansas.

FREDERICK KRAMER, as Assignee in Bankruptcy of Isaac Cohn, a Bankrupt, Plaintiff,
vs.
ISAAC COHN and M. S. COHN, Defendants.

The separate answer of M. S. Cohn of the bill of complaint ex-

hibited against him by Frederick Kramer, as assignee in bankruptcy of Isaac Cohn a bankrupt.

The defendant, now and at all times saving to himself all and all manner of benefit or advantage of benefit of exception, or otherwise, that can or may be had or taken to the many errors, uncertainties, and imperfections in said bill contained, for answer thereto, or so much thereof as this defendant is advised it is material or necessary for him to answer, answering, saith:

That he admits, so far as his knowledge extents, that it may be, and perhaps is, true that his codefendant, Isaac Cohn, was adjudicated a bankrupt on petition of his creditors, as stated in said complainant's bill of complaint; that he filed schedules as therein stated; that an assignee was appointed and discharged; that there had been no assignee for some time until complainant was appointed.

That his codefendant was formerly in business at Pine Bluff, Arkansas, and that his business house was burned.

18 This defendant denies that he ever was a clerk for his said codefendant, at Pine Bluff, Arkansas, or that he ever has been a clerk, agent, or employee of said codefendant in any capacity since about May or June, 1872, and alleges the truth to be that, for a few months in 1872, in Memphis, Tenn., he had been clerk for his codefendant, but that the only business relation existing between him and the codefendant in Pine Bluff, Arkansas, was that for about four months during the year 1872, to wit, from about the latter part of June, to the latter part of October in said year, they were partners in business; that some time in October, 1872, they dis-olved the partnership, and that from that time until the spring of 1875 they were not even on speaking terms.

That he has no knowledge from other than from information of the business of his codefendant, as connected with the burning of his business house at Pine Bluff, as to what was burned, or what he claimed or pretended, or whether such claims and pretences were true or false, and from such information he believes the allegations in said complaint contained charging his codefendant with fraud are false.

That he has no knowledge or information, other than from the bill of complaint herein, as to the complainant or creditors of his codefendant, by their agent, ascertaining that certain representations and pretences being false, as stated in the said complaint, or that his codefendant removed goods from his said store at Pine Bluff or transmitted over $6,000, or any other amount, to his father

19 in Europe, or what was done with such goods or money, if such goods were removed or money sent to Europe, as alleged in said complaint, and that he has no knowledge that, from such information, he believes the allegations in said complaint alleging fraud are false, of collections having been made by his codefendant from his business after the burning of his said store, nor information other — that contained in the said complainant's bill of complaint, and believes the said allegations to be false.

This defendant denies that his codefendant, at the time alleged in said complaint or at any other time, opened a business in Fort

Smith, in his name, with any part of the stock of goods from the store of his codefendant at Pine Bluff or elsewhere, or with his own means either directly or indirectly.

This defendant admits that his codefendant is his second cousin.

This defendant denies that his codefendant has, at this or any other time, had any interest in the business at Fort Smith, Arkansas, described in said bill of complaint, or that he put into said business any goods, money, or credits, or any other thing at any time in his own or any other name, either directly or indirectly, or that he is, or ever has been, conducting said business in any other capacity than as clerk for this defendant and alleges the truth to be that he is the sole owner of said business. That it was started, continued, and maintained by and with the means and credit of this defendant solely and entirely, and that his codefendant has not now, nor has he or any other person, at this or any other time, had any right, title, claim, or interest in or to the said business described in said bill of complaint. That his codefendant is employed by him as a clerk, and was so employed by him before said business was started, to go to Fort Smith to start said business for him, and that the only right or control his codefendant has, or ever has had, over said business is in the character and capacity of a clerk and in no other manner whatever.

This defendant, further answering, denies that he ever, at any time or in any manner, conspired or con-ived with his codefendant or any other person to defraud his creditors by burning the store of the codefendant or aiding, counseling, or advising him thereto, or that he -as any reason to suppose or believe that said store was burned by his codefendant, and alleges the truth to be that each and every of the charges and allegations made in the complainant's bill of complaint that this defendant conspired, connived, or contrived with his codefendant or any other person, in manner or form, to burn the said storehouse of his codefendant, or in any other manner, way, or form to aid him to defraud his creditors, are untrue, false, and slanderous.

This defendant says that the matters and things in said complainant's complaint contained are not sufficient in law to be answered unto by this defendant, and this defendant claims the benefit of the want of equity in said bill of complaint to the same extent as if he had demurred thereto.

M. S. COHN.

DUVALL AND CRAVENS AND
CLENDENING AND SANDELS,
Solicitors for Defendant, M. S. Cohn.

M. S. Cohn, the above-named defendant, says: That the matters and things stated in the foregoing answer, so far as stated of his own knowledge, are true, and so far as stated on information of others he believes them to be true.

M. S. COHN.

Sworn and subscribed before me, at Fort Smith, Arkansas, this 14th day of November, 1879.

JAMES BRIZZOLARI,
U. S. Comm'r for the West. Dist. of Ark's.

22 *Answer.*

In the District Court of the United States for the Western District of Arkansas.

FREDERICK KRAMER, as Assignee of the Estate of Isaac Cohn, a Bankrupt, Plaintiff,
vs.
ISAAC COHN and M. S. COHN, Defendants.

The seperate answer of Isaac Cohn, the above-named defendant.

Said defendant, saving and reserving to himself all and all manner of advantage and benefit of exception to the manifold imperfections and insufficiencies of the plaintiff's bill of complaint herein exhibited against him and his codefendant, M. S. Cohn, answering so much of said bill as he is advised and informed it is material or proper to answer, saith:

That it is true, as alleged by said *said* plaintiff, that for several years this defendant did a large mercantile business at Pine Bluff, Arkansas, but denies that said M. S. Cohn was at any period during the continuance of said business, or since this defendant came to the State of Arkansas, a clerk of this defendant, or otherwise in his employ. This defendant admits that a fire occurred in Pine Bluff, Arkansas, in the latter part of October, 1876, whereby his
23 storehouse was consumed with its contents, and that this defendant then owed nearly $20,000.00, but denies that his representations to the effect that his entire assets were destroyed were false or fabricated.

He denies that before the occurrence of said fire he (this defendant) removed large quantities, or any quantity, of goods to Watson, Arkansas, or elsewhere, and that he transmitted to his father in Europe large sums of money, aggregating over six thousand dollars, or any other sum, except as hereinafter stated.

Defendant denies that said goods, or any other goods of his, were placed in the custody of A. Boschwitz, or any other person, except two cases of goods which he received in payment of a debt after said fire occurred, and which defendant, about the 1st of January, sold (1877) in Memphis, Tenn., for $275.00.

Defendant denies that either "said" goods, or any other goods, or that any money or assets of any description, were held by "said" parties, or any other party or parties, until after this defendant's discharge in bankruptcy, and then transmitted to him.

Defendant denies that with said or any assets in any way belonging to him he opened a business at Fort Smith, Arkansas, but avers the truth to be that he was not the owner, nor posse-d of any right, title, or interest in or to one dollar of the money or a single

24 article of the goods with which said business was opened or has been maintained.

This defendant admits that, after the occurrence of said fire, he collected several small amounts of money, due him from customers and debtors of his during the months of November and December, 1876, and January, 1877, a good part of which was expended in paying the home debts of this defendant, such as clerk hire, &c., which were paid immediately after said fire, out of such collections, but denies that he has been in Pine Bluff or vicinity since about March 8th, 1877, and denies that he collected a cent on account of debts due him in said business since he left Pine Bluff.

He denies that either "said" collections or any other collections of his are now, or have ever been, invested in said business at Fort Smith; and defendant denies that said fire was an act or a series of acts contemplated, connived at, or carried out by this defendant, singly or in conjunction with his codefendant, M. S. Cohn, or any one else, for the purpose of defrauding his creditors, or for any other purpose, and avers the fact to be that said fire was an unmitigated misfortune to this defendant; that he had goods to the value of $28,000.00 in said store at the time of said fire without one cent of insurance thereon, and says that, by reason of said fire, he was reduced from comparative affluence to utter poverty, and that the allegation contained in plaintiff's complaint, that said fire was one of a series of acts contemplated, connived at, and carried out

25 by this defendant and said M. S. Cohn, for the purpose of defrauding defendant's creditors or for any other purpose, is unqualifiedly false and slanderous; and

Defendant denies that the stock at Fort Smith, in said complaint described, or any part thereof, is property kept back from this defendant's assignees or creditors.

Defendant denies that said stock is owned or is controlled by him, except as the clerk of M. S. Cohn; and defendant alleges that, since his advent to this country, he has contributed yearly, according to his means, to the support of his parents, who are now aged respectively 80 and 71 years; that said contributions were small because their wants were few.

That said sums, and each of them, were sent to his said parents without any reservation of benefit to this defendant, and that he has never directly or indirectly received one dollar of the same back in any manner.

And this defendant alleges that at the time of said fire his entire stock of goods, merchannise, books of account, wearing apparel, furniture, and fixtures were consumed, and that this defendant kept back no property from his creditors, from which he has ever received or now has any advantage or benefit.

Wherefore defendant prays that he be discharged with his reasonable costs, and as in duty bound will ever pray, &c.

ISAAC COHN.

26 DUVAL AND CRAVENS,
CLENDENING AND SANDELS,
Attorneys for Defendant.

FREDERICK KRAMER, Assignee, &c., Plaintiff,
vs.
M. S. COHN and ISAAC COHN, Defendant-.

The defendant, Isaac Cohn, says the matters and things set forth in the foregoing answer, so far as stated upon his own knowledge, are true, and, as stated upon the information of others, he believes to be true.

ISAAC COHN.

Subscribed and sworn to before the undersigned, at Fort Smith, in said western district of Arkansas, this 14th day of November, A. D. 1879.

[SEAL.] JAMES BRIZZOLARA,
U. S. Commissioner for the West. Dist. of Arkansas.

27 *Filing of Replication to Seperate Answer of Isaac Cohn.*

November Term, 1879.

MONDAY MORNING, 8½ O'CLOCK, *December 1st*, 1869.

Court met pursuant to adjournment.

Present: The Honorable Isaac C. Parker, judge of the district court of the United States for the western district of Arkansas.

Bill in Equity.

FREDERICK KRAMER, as Assignee, &c.,
vs.
ISAAC COHN and M. S. COHN.

On this day comes the complainant, by Mess. Cohn and Cohn and Thos. H. Barnes, Esq., his solicitors, and files his replication to the seperate answer of defendant, Isaac Cohn.

Bill in Equity.

MONDAY MORNING, *December 1st*, 1879.

FREDERICK KRAMER, as Assignee, &c.,
vs.
ISAAC COHN and M. S. COHN.

On this day comes the complainant, by his solicitors, Mess. Cohn and Cohn and Thos. H. Barnes, and files his seperate replication to the seperate answer of M. S. Cohn, one of the defendants in this cause.

28 *Replication to Seperate Answer of Isaac Cohn.*

In the United States District Court for the Western District of Ark's.

FREDERICK KRAMER, Assignee of the Estate of Isaac Cohn, a Bankrupt, Compl't,

vs.

ISAAC COHN and M. S. COHN, Defendants.

And now comes the said Frederick Kramer, as assignee of the estate of Isaac Cohn, a bankrupt, complainant, and says: That he ought not to be barred of his action, because he saith that the several matters set up in said seperate answer of said Isaac Cohn, defendant, are not true as therein set forth.

And he further says that the matters set up in his said bill are true and correct as therein set forth.

COHN AND COHN AND
THOS. H. BARNES,
Solicitors for Complainant.

29 *Replication to Seperate Answer of M. S. Cohn.*

In the United States District Court for the Western District of Arkansas.

FREDERICK KRAMER, as Assignee of the Estate of Isaac Cohn, Bankrupt, Plaintiff,

vs.

ISAAC COHN and M. S. COHN, Defendants.

And now comes the said Frederick Kramer, as assignee of the estate of Isaac Cohn, a bankrupt, complainant, and says: That he ought not to be barred of his action, because he saith that the several matters set up in said seperate answer of said M. S. Cohn, defendant, are not true as therein set forth; and he further says that the matters set up in said bill are true and correct as therein set forth.

COHN AND COHN AND
THOS. H. BARNES,
Solicitors for Complainant.

30 November Term, 1880.

MONDAY MORNING, 8½ O'CLOCK, *November 29th*, 1880.

Court met pursuant to adjournment,

Present: The Honorable Isaac C. Parker, judge of the district court of the United States for the western district of Arkansas.

Bill in Equity.

FREDERICK KRAMER, as Assignee, &c.,

vs.

ISAAC COHN and M. S. COHN.

Complainant, by consent, files amended bill of complaint.

31 *Amended Bill.*

In the United States District Court for the Western District of Arkansas. In Equity.

FREDERICK KRAMER, as Assignee in Bankruptcy, &c.,
vs.
ISAAC COHN and M. S. COHN.

To the Honorable Isaac C. Parker, judge of said court:

The complainant says: That on or about the 24th day of April, 1877, the defendant, Isaac Cohn, was upon the petition of his creditors adjudged, by the honorable United States district court for the eastern district of Arkansas, a bankrupt; that as such bankrupt he filed his schedules of assets and liabilities in proper form; that on the 22d day of June, 1877, W. B. Ragland was appointed assignee of said estate; that there were no assets of said estate reported in said schedules to be administered upon; that the said assignee obtained his discharge from said office on or about the 30th day of July, 1877; that since then until the 13th day of September, 1879, there was no assignee of said estate, and that said bankrupt obtained his discharge in bankruptcy on or about the 5th day of August, 1877.

He further says: That for many years before, and up to the 24th day of April, 1877, the said Isaac Cohn had been doing
32 at Pine Bluff, Arkansas, a large business, constituting of dry goods, clothing, boots, shoes, hats and caps, notions, gents' furnishing goods, and other merchandise, peculiar to a business of general merchandise, in which said business the said M. S. Cohn was a clerk, but afterwards became a partner; that a short time before the commencement of proceedings as aforesaid against said bankrupt a fire occur-ed in his place of business at Pine Bluff, by virtue of which said Isaac Cohn claimed and pretended that his entire stock, books of account, and avails were destroyed, and upon that plea procured some of his creditors, as complainant is informed & believes, to file a petition in bankruptcy against him as aforesaid, thereby hoping and intending to relieve himself from payment of his then outstanding indebtedness, which said bankrupt's schedules show at that time to have equalled nineteen thousand six hundred and ninety-five dollars.

That not exceeding two months before the date of filing this complaint certain of the creditors of said bankrupt, through their agent, ascertained that the representations and pretence of said bankrupt, to the effect that his entire assets were destroyed, was fabricated and false; that before the occurrence of the said fire the said defendant, Isaac Cohn, removed large quantities of goods to Watson, Arkansas, and at same time, or shortly afterwards, transmitted to his father in Europe, and placed in divers relatives' hands, whose names
33 are to complainant unknown, in New York city, in the State of New York, large sums of money, aggregating over six thousand dollars; that said goods were placed in the hands of A. Boschwitz, as complainant is informed and believes, at said town of

Watson, and that said goods and moneys remained in the hands of said parties until the said defendant's discharge in bankruptcy, when, as complainant is informed and charges the truth to be, said defendant caused said assets to be transmitted to him, with which, complainant is informed and believes, the said bankrupt opened a business at Fort Smith, in said State of Arkansas, in the name of the said M. S. Cohn ostensibly, but really in the name of no person particularly.

That said M. S. Cohn is the same person who was said Isaac's clerk and partner at Pine Bluff, and is also a cousin of said Isaac.

And in addition to said assets the said bankrupt, before said fire, took from the building wherein said stock was situated in Pine Bluff his books of account, as complainant is informed and believes, and collected and appropriated a large amount of the accounts therein set forth, even during the pendency of the said bankrupt proceedings, which he also invested in the said business at Fort Smith; all of which, in disregard of his oath and the order of the court in bankruptcy, said bankrupt kept and retained from his creditors in bankruptcy; all of which acts were contemplated, connived at, and carried out by and between the said Isaac and M. S. Cohn for the purpose of defrauding the said creditors of said bankrupt,
34 and that the said stock at Fort Smith, hereinafter more fully described, is the property so kept back with its material increase.

That said Isaac Cohn is now carrying on said business so started at Fort Smith in the name of said M. S. Cohn, as he pretends, but really in no name, so far as outward signs indicate, while in fact the same is owned and controlled and carried on by the said Isaac and is the property kept back as aforesaid by him from his creditors in bankruptcy, with the increase thereof, which said business consists of a stock of goods composed of dry goods, boots and shoes, hats and caps, notions, furnishing goods, and other merchandise usually kept in a general merchandise business, on the east side of Garrison avenue, in said city, on a corner of the alley, in a stone building diagonally opposite the Fishback block, in said city, out of which said business the said defendant, Isaac Cohn, is daily selling off goods forming the stock thereof.

That if the said M. S. Cohn claims or has an interest in said business at Fort Smith it is a minor interest, the nature of which complainant is not fully advised; that at most it does not exceed that of a junior partner, with but a nominal interest in the stock and a share in the profits of the same.

That complainant was, by the order of the United States district court for the said eastern district of Arkansas, on the 13th day of September, 1879, appointed assignee of said bankrupt estate;
35 that he has not, nor have any of the creditors of said bankrupt, known of the fraud of said bankrupt until a short time before this suit was brought, not exceeding three months.

And complainant avers that the said M. S. Cohn does not reside in the State of Arkansas, but resides in the State of Missouri.

The premisses considered the complainant prays for an injunction

to restrain the said Isaac Cohn and M. S. Cohn from selling or attempting to sell, or interfere with or attempt to interfere with, the stock of goods aforesaid in said store and business at Ft. Smith, on the east side of Garrison avenue, in said city, as aforesaid, and that their agents and representatives be restrained from so doing; that a receiver be appointed to assume charge of and manage said business until the further order of the court; that said defendants answer hereto, and that said Isaac Cohn account for the goods and moneys so kept back, with the increase thereof; that the said M. S. Cohn account for the said moneys so kept back & increase, and that if any interest be found to exist in said business in time that a reference be had to ascertain the same, and that of said Isaac, at the time of commencement of this suit; that, on their failure so to answer and account, a decree go divesting all ownership in said stock out of said Isaac and M. S. Cohn, and vesting the same in complainant, and that the usual orders for the disposition of said stock be made, and for process according to law and other proper relief.

THOS. H. BARNES, COHN AND COHN,
Sol's for Compl't.

36 *Submission of Cause to Court.*

August Term, 1881.

SATURDAY MORNING, 9 O'CLOCK, *September 17th*, 1881.

Court met pursuant to adjournment.

Present: The Honorable Isaac C. Parker, judge of the district court of the United States for the western district of Arkansas.

Complaint in Equity.

FRED. KRAMER, as Assignee of ISAAC COHN,
vs.
ISAAC COHN and M. S. COHN.

On this day come the parties, by their respective attorneys, and file their written agreement that this cause stand submitted to the court upon the briefs, bill, answers, depositions, and exhibits, all points of exceptions to the testimony as to relevancy and competency being reserved for argument in the briefs, as well as points claimed in or to either bill or answer.

37 *Decree for Complainant Against I. Cohn.*

May Term, 1882.

MONDAY MORNING, 8½ O'CLOCK, *May 8th*, 1882.

Court met pursuant to adjournment.

Present: The Honorable Isaac C. Parker, judge of the district court of the United States for the western district of Arkansas.

FREDERICK KRAMER, as Assignee of Isaac Cohn, Bankrupt,
vs.
ISAAC COHN and M. S. COHN.

And now, on this day, come the parties, by their solicitors, and

the court having taken time to consider of what decree to render herein, and being sufficiently advised in the premises, is of opinion that as to the defendant, Isaac Cohn, the complainant is entitled to recover for money and assets fraudulently withheld by him from his assignee in bankruptcy the sum of five thousand dollars ($5,000.00), besides interest at the rate of six per cent. per annum from the 1st day of May, 1877; but that as to said defendant, M. S. Cohn, the said complainant has failed to connect him with the said
38 fraudulent withholding of assets of said Isaac Cohn, and that as to said defendant the relief prayed in the complainant's bill of complaint ought not to be granted,

It is therefore considered and decreed that the complainant, Frederick Kramer, as assignee in bankruptcy of the estate of Isaac Cohn, a bankrupt, have and recover of and from the defendant, Isaac Cohn, the sum of five thousand, $5,000.00, dollars, principal, together with one thousand five hundred, $1,500, dollars, for the interest upon said sum from the 1st day of May, 1877, aggregating six thousand five hundred, $6,500.00, dollars, and all his costs in and about this suit expended, and have execution therefor.

And that as to said defendant, M. S. Cohn, the bill herein be and the same is dismissed with costs.

And it appearing that the order was made on April 21st, 1882, a day of the February term, 1882, of this court, and not entered of record, it is by the court ordered that the same be entered *nunc pro tunc.*

Opening Order, May Term, 1883.

Be it remembered that at a regular term of the district court of the United States for the western district of Arkansas, begun and held at the U. S. court-house at Fort Smith, in said district, on the 7th day of May, A. D. 1883, it being the first Monday in said month, and the day appointed by law for the holding of said court—present and presiding: The Honorable Isaac C. Parker, judge of said court; also present: Wm. H. H. Clayton, Esq., attorney for said western district of Arkansas, and Thomas Boles, Esq., marshal for said district, and Stephen Wheeler, Esq., clerk of said court—when the following proceedings were had on the chancery side of said court, to wit:

40 *Nunc pro tunc Order Setting Time for Hearing of the Petitions for Rehearing of Cause.*

May Term, 1883. July 3rd, 1883.

FRED. KRAMER, as Assignee, &c.,
vs.
ISAAC COHN and M. S. COHN.

Bill in equity.

It being made to appear to the court that on May 8th, 1882, by a misprison of the clerk, an order was improperly entered relating to the petitions for rehearing of complainant and the defendant, Isaac

Cohn, the said order is corrected to date as of the day on which said order should have been entered to read as follows:

That the parties to this cause come before this court by their solicitors, and the defendant, Isaac Cohn, filed his petition for a rehearing of this cause and for vacating the decree herein rendered, so far as the same hold him liable to complainant, and the said complainant files his petition for a rehearing as to so much of the decree and cause herein as relates to the defendant, M. S. Cohn, and thereupon the decree aforesaid is suspended until the further order of this court.

And it is ordered that said petitions for rehearing be set
41 down for hearing on the 29th day of May, 188—, and that the parties have until said day to file briefs herein. And it appearing that this order was made on April 21st, 1882, a day of February term, 1882, of this court, and that by omission of the clerk it was not entered as of the day it was made, it is by the court considered and ordered that the same be entered *nunc pro tunc* as of the 21st day of April, 1882.

42 *Complainant's Petition for Rehearing.*

In the United States District Court for the Western District of Arkansas.

FRED. KRAMER, as Assignee, &c., Plaintiff,
vs.
ISAAC COHN and M. S. COHN, Defendant-.

Comes the complainant, by his solicitors, and prays the court for rehearing as to so much of the decree and cause herein as relates to the defendant, M. S. Cohn, and for cause states:

1st. That the court did not give proper and sufficient effect to the statements of the coconspirator to the scheme of fraud disclosed by the testimony herein.

2d. That the court did not sufficiently apply the testimony deduced from undisputable and undisputed circumstances, and the admission of Isaac Cohn, one of the defendants, to the effect that the fund by him fraudulently withheld was incorporated in the business at Fort Smith, conducted in no one's name to all outward observation, except that of Isaac Cohn himself.

3rd. That the court did not apply the law relating to the acts and statements of coconspirators, nor the law declaring the amount
43 and kind of proof connecting parties with a fraudulent disposition of property properly, but gave the defendant, M. S. Cohn, the benefit of such an application as would practically render it impossible in any case to sufficiently trace property so fraudulently obtained.

4th. That there was no proof to disconnect M. S. Cohn from the fraud, except the statements from the two defendants, and those statements are more than contradicted by the circumstances in the case.

5th. That the court erred in construing the law so as to require

complainant to prove the connection of the said M. S. Cohn beyond a reasonable doubt; that the court practically did make this application of the law; that the court failed to give the plaintiffs the benefit of such proof as they had made in circumstances and acts, and contradictory statements of both defendants as showed M. S. Cohn connected with the fraud alleged in the bill of complaint reasonably and properly.

6th. That the law under such circumstances requires the defendants to explain away the reasonable and probable case made by the complainant against them in cases of fraud, because they
44 alone possess the means to give a true and reasonable account of the matter, and failing such the defendants must be construed to have failed in showing *bona fides*.

And complainant says the court, in rendering its decree favorably to M. S. Cohn, failed to give complainant any benefit whatever of this just and righteous principle, but held him to a doctrine which must, if adhered to, placed, in the debtor's power, a means of evading the payment of just debts not to be overcalculated.

COHEN AND COHEN AND
THOS. H. BARNES,
Solicitors for Complainant.

45 *Petition of Isaac Cohn for Rehearing.*

In the United States District Court for the Western District of Arkansas.

FREDERICK KRAMER, Assignee, &c., Complainant,
vs.
ISAAC COHN and M. S. COHN, Defendants.

The said defendant, Isaac Cohn, now comes and moves the court here to vacate and set aside so much of the decree rendered herein on this day as readjudged that complainant recover of him the sum of sixty-five hundred dollars—

1st. Because this court has no jurisdiction to pronounce such decree, and

2d. Because said decree, as to him, is contrary to law, and not sustained by sufficient evidence.

CLENDENNING AND SANDELS,
Solicitors for Def't Isaac Cohn.

46 *Order Overruling Petition of M. S. Cohn and Setting Aside Judgment as to Isaac Cohn.*

May Term, 1883.

THURSDAY MORNING, 9 O'CLOCK, *June 7th*, 1883.

Court met pursuant to adjournment.

Present: The Honorable Isaac C. Parker, judge of the district court of the United States for the western district of Arkansas.

Bill in Equity.

FREDERICK KRAMER, as Assignee of the Estate of Isaac Cohn, &c.,
vs.
ISAAC COHN and M. S. COHN.

On this day come- on to be heard the petition of complainant for a rehearing of this cause as to defendant M. S. Cohn, which petition is by the court, after due consideration, overruled; and also came on to be heard the petition of defendant Isaac Cohn for a rehearing of the said cause as to him, and that the decree heretofore, to wit, on the 21st day of April, A. D. 1882, rendered against him in said cause be set aside.

On consideration whereof the court, being fully advised, doth sustain said petition.

It is, therefore, by the court ordered, adjudged, and decreed
47 that the decree heretofore, on the 21st day of April, A. D. 1882, in this cause rendered, so far as the same relates to defendant Isaac Cohn, be, and the same is hereby, in all things, set aside and held for naught.

It appearing to the court that it is without jurisdiction in this cause—

It is further ordered, adjudged, and decreed that the bill of complaint herein be, and the same is hereby, dismissed as to Isaac Cohn without prejudice and with costs.

To which order of the court complainant, by his solicitor, here and now excepts.

48 *Filing of Petition for Appeal.*

In the District Court of the United States for the Western District of Arkansas.

FRED. KRAMER, Assignee, &c., Complainant,
vs.
ISAAC COHN and M. S. COHN, Defendants.

And now on this day comes the complainant, Frederick Kramer, as assignee of the estate of Isaac Cohn, bankrupt, and presents his bill of exceptions herein, which is duly signed, sealed, and ordered to be made a part of the record herein, and also prays an appeal to the Supreme Court of the United States from the decree of the court made herein upon the 8th day of May, 1883, in dismissing complainant's bill as to M. S. Cohn, and also to its decree made upon the 7th day of June, 1883, in refusing complainant's petition for a rehearing of so much of the decree first made as dismisses this cause as to the defendant M. S. Cohn, and also as to the decree of said court made on the 7th day of June, 1883, upon a petition of rehearing of Isaac Cohn, the defendant herein, sustaining said petition and dismissing the complainant's bill as to the said Isaac Cohn; which appeal is hereby granted.

49 *Order Granting Appeal.*

In the District Court of the United States for the Western District of Arkansas.

Be it remembered that at a regular term of the United States district court for the western district of Arkansas, in a cause therein depending in chancery between Frederick Kramer, as assignee in bankruptcy of Isaac Cohn, a bankrupt, as complainant, and Isaac Cohn and M. S. Cohn, defendants, the complainant, at the hearing of said cause, to sustain the issue on his part introduced the following depositions, agreements, and transcripts of records as testimony:

50 *Depositions for Plaintiff. Sam'l Franklin.*

SAMUEL FRANKLIN, a witness for the plaintiff, being duly sworn, deposes and says:

My name is Sam'l Franklin, of lawful age; by occupation, manager of the Pine Bluff Gas Company, also an attorney-at-law and a resident of the city of Pine Bluff, Arkansas.

How long have you resided at Pine Bluff, Arkansas?

Off and on for twenty-six years.

Do you know the defendants, and how long have you known them?

Since 1876.

What were the defendants doing at that time?

Mr. Isaac Cohn came here from Memphis and went into a general merchandise business, in about the year 1876. I came up here in 1873 from below, and Cohn came here about two years after. I did not pay very particular attention to the time.

When did M. S Cohn come?

I don't remember of seeing him until some time after Isaac Cohn came.

What did M. S. Cohn do after he came here?

I don't know of anything prior to his going into business for himself, which I think was in 1877.

51 Was M. S. Cohn one of the defendants in the employ of Isaac Cohn during that time?

I am not positive; all I remember is that there was a difficulty between Isaac Cohn and M. S. Cohn, and they had a separation. This difficulty took place between the time Isaac Cohn came here and the time that M. S. Cohn went into business for himself.

What did M. S. Cohn appear to do after he came to Pine Bluff and before he went into business with his brother, Isaac Cohn?

I saw him frequently on the streets, and [in] Isa-c Cohn's, the defendants', store.

(There are 2 Isaac Cohns; one Isaac Cohn is one of the defendants in this cause, and the other Isaac Cohn is a brother of the defendant, M. S. Cohn.)

How long was M. S. Cohn here before he went into business?

I cannot recollect.

From what place did M. S. Cohn come?

I do not know; M. S. Cohn and I were not very intimate; I scarcely knew him.

What kind of business was this of Isaac Cohn's at Pine Bluff?

General merchandise.

Do you know where in Pine Bluff it was carried on?

On the north side of Banagin St., on corner of Banagin St. and Dandenie St.; it was in a two-story frame building; he only occupied the lower story; the upper story was known as the city hall, and was a club room.

52 What became of the building and its contents?

It was destroyed by fire in 1876, in October.

Who were, or appeared to be, in the employ of Isaac Cohn at that time; that is, Isaac Cohn, the defendant?

I don't remember; he changed his employees very often.

Was M. S. Cohn in the employ of Isaac Cohn, one of the defendants?

No; he was not here at that time.

Who occupied the buildings destroyed by fire above referred to at that time?

Isaac Cohn, the defendant, and John Bloom; Cohn was carrying on a mercantile business and John Bloom had a saloon in one of the lower rooms and a club-room above.

What kind of business were you carrying on at the time the fire occurred?

I was secretary and manager of the Pine Bluff Gas Company, and was also agent for John I. Adams, commission merchants, New Orleans, and for Valentine, Schuck and Co., of St. Louis, Mo.

In what sum, if any, was Isaac Cohn indebted to the commission houses you represented?

About $500 or $600; to John I. Adams and Co.

Did the said Isaac Cohn resume business after the fire at Pine Bluff; if not, what did he do?

53 He wound up the old business the best he could and made what collections he could; he did not resume business.

Did he go into bankruptcy?

Yes.

(Objected to by d'f'ts' att'y, on the ground that the question is incompetent, irrilevant, and hearsay.)

What, if any, meetings or conversations or arrangements did you have with the said Isaac Cohn, looking to a settlement of his indebtedness to John I. Adams and Co., subsequent or prior to his going into bankruptcy?

He promised to pay me $200, and I addressed or advised him, as agent of John I. Adams and Co., to make collections and turn the same over to me for account of John I. Adams and Co. I collected $100, which I remitted ot John I. Adams and Co. Isaac Cohn owed me at the time, personally, $100, for the payment to secure — he gave me a pair of silver candlesticks and a small diamond ring as collateral. After that — received a letter from Schuch & Co., of Memphis, asking me to join them in putting Isaac Cohn, the said

defendant, into bankruptcy, which I did, as the agent of John I. Adams and Co. All this occur-ed prior to the bankruptcy. Subsequent to his going into bankruptcy I met Isaac Cohn, the defendant, in St. Louis, Mo., in 1877, and prior to his discharge in bankruptcy, and I asked him to pay me the $100.

54 He stated that he did not have the money then; that he had sent all the money he had had to Europe, and had written for same to be returned, and that he would pay me on its arrival; and that is the last I know of Isaac Cohn.

At any time of the conversations had with Isaac Cohn subsequent to the fire, was anything said which indicated what he had saved from the fire; if in stock, books of account, notes, mortgages, or anything else, what amount?

He told me he lost everything excepting the few goods that he and a man named B. Wacher, who [was] also burned out, saved together. I don't know what amount of stock; I think the joint stock of Wacher and Cohn was worth from $1,200 to $1,500.

He afterwards, in another conversation, when I asked him the question, *had* he could [not] make out his accounts or make any collections unless he had his books?

I understood him to say, in an indirect way, that he had not lost any books.

He also said, Out of the stock saved, shipped several cases of goods to a Mr. Borchinz, at Watson station, in Desha county; said goods were attached by the Merchants' and Planters' Bank of Pine Bluff, and Cohn, the defendant, compromised the claim with the bank.

55 Was this prior or subsequent to his bankruptcy?

All prior.

Was the fact that he had saved goods and books of account a matter of public notoriety or not?

I don't know about that.

Did Isaac Cohn, the defendant, make any secret of the fact of his having saved his books and notes?

I cannot answer that.

How long after the fire was it that M. S. Cohn went into business at all at Pine Bluff, Ark's, after the fire?

M. S. Cohn was doing a general merchandise business at "Jones' Landing," on the Arkansas river, for about two years before and after the fire. I remember selling him some goods for John I. Adams and Co., New Orleans. Tho next time I saw him he was on his way to Europe, passing through Pine Bluff; the next I heard of him he was in business at Newport.

I saw him in St. Louis.

How long did the business carried on by M. S. Cohn in Pine Bluff continue before the business at Jones' Landing was begun?

I don't know; probably it was about 6 or 8 months.

Please state at what time you saw M. S. Cohn in St. Louis, and fix the time with reference to the bankruptcy of Isaac Cohn, the defendant.

56 My recollection *that* at that time the creditors applied for bankruptcy against Cohn, the defendant.

When was the business at Jones' Landing begun?

He quit here and went there.

State how large a stock M. S. Cohn had in his business at Pine Bluff.

About $2,000. I know that he did a very successful business at Jones' Landing while he was there.

He was reputed at Jones' Landing when he left there — about $7,000 or $8,000.

How large a stock did Isaac Cohn, the defendant, have at the time of the fire?

I should judge between $10,000 and $15,000 prior to the fire; this was about 2 months prior to the fire.

Do you know what stock he had at the time of the fire?

I do not know.

Did he ever have any conversation with you subsequent to the fire in which he referred to his indebtedness? If so, what did he say?

Nothing more than what I have stated in this deposition.

Are you familiar with the course of commercial transactions and the kind and magnitude of the business done in Pine Bluff and its vicinity in the years 1875, 1876, & 1877? If so, please state—

57 that is, were the years good or bad for business generally?

I am not very familiar. I think business in the country stores was better than it was in Pine Bluff. There were several failures in Pine Bluff, while there were none to my knowledge in the country.

What was the general complaint among merchants with reference to business in Pine Bluff and elsewhere since 1873 and before 1879?

Short crops, low prices, and poor collections.

Have you had a large or small experience as a business man, with reference to magnitude of business and the profits of the same in all lines since 1873 and before 1879, and state what was the result of that experience?

Yes, I have had some experience; where goods are sold on credit an average profit of 33 per cent. was made, if collected. In the city the profits on groceries or goods sold for cash, generally for cash, was about 15 p'r cent., net; in the country the profits would be ⅓ larger.

During how many of these years have you represented commission or grocery houses?

In 1875, 1876, 1877, & 1878.

Have those houses experienced many losses?

Good many; some of the heaviest were with planters for advances on crops, &c.

58 Is it or is it not true that between the years 1873 and 1879 the mercantile community passed through a crisis which engulphed substantial houses which had stood for years?

I know of none here. I know that John I. Adams and Co., of New Orleans, failed; also Valentine Schuch and Co. failed.

Is it or is it not true that failures of substantial houses all over

the United States occurred during the period of from 1873 to 1879?

Yes; I presume that is the fact.

From your knowledge and experience of the condition of the houses in Pine Bluff and vicinity, what would have been the effect upon the financial and commercial standing of the crops of 1879 and the prices of goods had not been what they were and are now?

One-half of the commercial and planting interests would have had [to] suspend operations.

Please state the reasons why you think they would have had to suspend, with reference to the period of 1873 to 1879?

Owing to the unsuccessful preceding years and insufficiency of capital to go on to sustain further losses.

59 Were the causes co-operative between those years in this vicinety last mentioned general throughout the State and county or otherwise?

They were in the bottom lands of the Mississippi Valley.

Where is Isaac Cohn, the defendant, now?

I am told he is at Fort Smith.

What do you know, if anything, of the fund which Isaac Cohn, the defendant, expected to be returned from Europe to him?

I know nothing. I have not seen him since.

State again when you came to Pine Bluff, prior to your acquaintanceship with Isaac Cohn, the defendant, and from where?

From Green Bach and McKinzie landing, on the Ashley place, where I was then planting and doing business, to Pine Bluff to build the gas works; this was in 1873.

Were you acquainted with either Isaac Cohn, the defendant, or M. S. Cohn prior to the time you came to Pine Bluff?

No.

State again how long after you came to Pine Bluff you became acquainted with Isaac Cohn, the defendant, and M. S. Cohn.

I don't recollect exactly. It may have been in 1874; it may have been later or earlier.

60 What, if anything, did M. S. Cohn say to you with reference to the business he carried on at Newport, Arkansas?

I don't recollect; did not speak to him much about business. He told me [he] had a child.

Did he say anything to you at that time or at any subsequent time with reference to Isaac Cohn, the defendant, with reference to busines or with a view to go into business?

I don't recollect; I was with him but a few moments.

Did you say anything in that interview with M. S. Cohn about the indebtedness which was due by Isaac Cohn, the defendant, to John I Adams & Co.; and, if so, what was said?

Nothing that I remember.

X-Examined for def't:

Did Isaac Cohn state to you how much of the goods that had been saved in connection with Wacher were his?

He did not.

Could you now say that Cohn said that these goods had been saved by having been in Wacher's hands?

I could not; I know that Isaac Cohn frequently let Wacher have goods to sell, and that Wacher was indebted to Isaac Cohn, the defendant, in about the sum of $300 at the time of the fire.

61 Did Isaac Cohn, the defendant, say in town that he had saved his books?

No, he did not say so directly, but, as I said before, in an indirect way.

When Isaac Cohn, the defendant, made the statement in regard to having sent his money to Europe, and in the conversation about the books, were you not dunning him pretty cleverly for the money he owed you as agent for John I Adams and Co.?

No; I was led to believe that he had the books, because he told me so a long time after I met him in St. Louis and pressed him to pay me the $100, and then it was that he said he had sent his money to Europe, and when it was returned he would pay me.

You stated in your examination-in-chief that he indirectly told you that he had his books? State how that was.

When I asked him the question how he could make out his accounts or make his collections unless he had his books and papers, he told me, "Never mind, I have got the books." This is what I call indirect, coming from him.

Is it not a fact that in the fall of 1875 and spring of 1876 the price of goods had not reached the lowest "ebb?"

I do not remember; I was chiefly engaged in gas matters; I know that gas-pipe, in the fall of 1872, was $80 per ton in Cincinnati,

62 and went down as low as $40; in 1873, in fall, it went down as low as $27 in 1877.

Do you remember what the character of crop was in 1876?

I do not.

Do I understand you to say that all the crops from 1873 to 1879 were continuously poor?

None of them were very poor crops.

In this conversation in regard to the books, what brought that about?

He had been garnisheed or was afraid of being garnisheed, and he wished me to authorize him to make some collections for John I. Adams and Co., which I did, but he failed to pay over the amounts collected.

Do you know, of your own knowledge, of his making any collections?

Yes; he told me so; I know that he made several attachments and collected some little money; I don't know the amount it was; not much.

Is it not true that in 1874, 1875, 1876 men did make money in business at this place?

I cannot tell.

How about the country stores?

The country stores generally did well, except where merchandizing

and planting were combined; what was made from profits in mercantile business was lost in planting.

63 Do you remember when Isaac Cohn left here?

I think it was in 1877, in the early part of the year.

Could you fix the time of the year he gave you the ring and candlesticks as collateral?

Two or three months before the petition in bankruptcy.

SAM'L FRANKLIN—redirect by plaintiff:

Please state all that was said at the time Isaac Cohn led you to believe that he had saved his books.

Isaac Cohn met me on the street talking to me about his business; this occurred after the bank had been satisfied as to the Borchnitz attachment; he stated that he had a good many claims due him in the country, which, if he could collect, he would pay me the John I. Adams and Co. amount. I told him that I would constitute him the agent of John I. Adams and Co. to collect said debts if he would pay them $200 out of the collections, and receipt to him in full. I did give him a power of att'y to collect, and, as before stated, he accounted to me for none of the collections so made.

It was just before I executed the power of attorney to collect that I asked him the question: "How do you know what the parties owe you, or how can you collect unless you have the books

64–65–66 and the accounts?" and he in an indirect manner told me, "Never mind; I have got the books."

And further this deponent sayeth not.

SAMUEL FRANKLIN.

Deposition of John Bloom.

JOHN BLOOM, a witness for the plaintiff, being duly sworn, deposes and says:

My name is John Bloom; a resident of the city of Pine Bluff; of lawful age, and by occupation a hotel keeper.

I know the defendant Isaac Cohn and M. S. Cohn.

When did you first become acquainted with Isaac Cohn, the defendant in this suit?

About three years before the fire in October, 1876?

When did you first know M. S. Cohn?

About the same time or a short time after I knew Isaac Cohn, the defendant; I think he came along when Isaac Cohn came with the goods.

Did Isaac Cohn, the def't, do business in Pine Bluff, and when did he close, and how long did he continue?

He continued in business until the fire occurred in 1876,

67 and then it closed. I was doing business up stairs in the city hall, and Isaac Cohn did business in the corner room below.

How often was you about Cohn's store while the house was standing?

Every half hour, except when he or I was engaged in business.

Was M. S. Cohn a clerk in the store of Isaac Cohn, the def't, at the time of the fire in 1876?

He was not.

Had he ever been a clerk for Isaac Cohn, the defendant?

They were working together, but do not know whether as clerk and proprietor or as partner.

How long before the fire was it before M. S. Cohn left the store that was carried on by Isaac Cohn, the def't?

It was some time before the fire when M. S. Cohn left the store and went into business for himself.

Where did the fire that consumed Isaac Cohn's store originate?

(No answer.)

Do you know anything about what Isaac Cohn saved from the fire?

From what I learned from Cohn and the man who bought the goods from Cohn (Wacher), and Cohn told me that he sold $2,000 worth of goods to Wacher either for $900 or $1,100. I don't remember which.

What other property did he save?

68 A bill of goods that he bought in Cincinnati; had them stopped below here and sold them to another. The bill was for $600 or $700 worth of liquers.

Did he save anything else from the fire?

After the fire I went to Cohn, he owing me, as I thought, about $50, and asked him to help me a little, as I had not saved anything from the fire.

He said he had no money; I then asked him to give me his note at 30 days, and I thought I could get the money on it; he told me that he could not give it on 30 days, but that he had sent to Europe some $5,000, and it would take 40 days to get it back here, and that he would give me his note at 40 days, which he, shortly after the fire, did.

This is the note in the following words and figures:

$50.00 PINE BLUFF, *March 5th*, 1877.

Forty days after date I promise to pay to the order of John Bloom fifty dollars, value rec'd, payable at the banking house of Buck Smail and Co., without defalcation or discount, with interest from maturity, at the rate of 10% per annum until paid.

No. 13,155. ISAAC COHN.

Endorsed: "Pay to P. K. Roots, or order, for collection."

69 The conversation as to the note was some time after the fire. Was this note presented to Isaac Cohn at maturity?

When Mr. Isaac Cohn went away, I did not know when he was going away; he said he was going away, and would let me know when; and when he went he bid me good-bye and said that he did not know where he was going to.

The first that I knew where he went to was from Mr. Opplatik, a travelling agent for a New Orleans house; he said that Cohn was at Fort Smith.

Did you send the note to F't Smith?

When I heard from Mr. Opplatik that Cohn was doing well at F't Smith, I sent the note to the Merchants and Planters' Bank *to* Fort Smith for collection. Hunn, the cashier, sent it on to F't Smith, and in due time it was returned to the bank not paid; and after that I called at the bank, got the note, and took it home.

These goods that were received from Cincinnati by Cohn, and stopped below and sold, how long was that after fire?

It was about 5 or 6 days after the fire.

Did Isaac Cohn ever have any conversation with you with reference to the mode in which he got this $5,000.00 that he sent to Europe?

No; he said he had money on hand, and that he had that
70 much, and if his creditors would not let him alone he would go home and stay, meaning to Europe.

How long after the execution of the note to you was it before Isaac Cohn left Pine Bluff?

About a month or 6 weeks; it was not long; paid no particular attention to the time.

Where was that note executed?

In Pine Bluff, and was signed and made there.

X-Examination of John Bloom for D'f't.

X-examined for d'f't:

Have you ever been sworn in this cause before?

I believe I was. Yes; I made the affidavit that was sent to Fort Smith.

When was it that Isaac Cohn told you that he had — $2,000 for $900 or $1,100 to Wacher?

I think it was about the latter part of October or the 1st of November, 1876, after the fire of the 9th of October, 1876.

Was Wacher's store burned out at the same fire?

Yes; Wacher saved nearly all his stock.

Did Isaac Cohn tell you this?

Yes; and so did Wacher. Wacher appeared to feel good over the bargain.

71 When did he tell you about the goods from the liquor house?

A very few days after the fire; inside of a week, I know.

Where was this conversation?

Right there on the street.

He told you that he sold the goods to Wacher for $900 or $1,100 and the liquers. Now, then, you also said that Isaac Cohn was owing you at that time the conversation occur-ed, some time — fire?

Yes; the conversation in regard to the goods sold to Wacher and the liquers from the Cincinnati house was a few days after the fire.

How long before the note was given was it that you had this conversation as — this amount due to me?

About the same day.

Did you save nothing from that fire?

Nothing.

Now, you have said that he told you that he had the money from the sale of the goods to Wacher. How was it that you did not ask him for the money then?

When I did find that out and I asked him for my money then he told me that he had sent the money to Europe and that as soon as it came back he would pay me. It was some time after the fire that this conversation about the goods sold Wacher took place.

72 How did he come to tell you about these liquers?

I received a letter from the house in Cincinnati saying, Why have you not had your goods shipped? Cohn has his shipped. I came to Cohn and said, Cohn, what have you done with the goods? He then told me that the goods came up as far as Sarassa on the river, and he said he sent word down to Schramm to receive the goods at his landing, as he was owing him some money.

How long after you got —, after this note from Isaac Cohn, was it before Cohn went away?

It may have been a month; I paid very little attention to the time.

Did I understand you to say that the $5,000 which Cohn sent to Europe was money that he had on hand at the time of the fire, or was it money that he had received from the goods in haste to Washer, and from other sources since the fire?

When I found out that he had sold the goods to Washer, he told me that he had made up $5,000, which he had sent to Europe, and that, if his creditors did not press him, he would have his money back in 40 days.

When did you tell, and whom did you first tell about this conversation with Isaac Cohn about this $5,000 that was sent to Europe?

73 I don't know that I could name the man, but at one time, sitting at my gallery, several people there, among them Mr. M. A. Cohn, from Little Rock.

They were talking about business, and Isaac Cohn's name was mentioned, that he does such a nice, large business in Ft. Smith.

I remarked that, if I had that $5,000 which he sent to Europe, and his father sent back to him, I could do nice business too. Mr. M. A. Cohn asked me, How do you know that he received that $5,000 back from Europe? And I told him that Isaac Cohn told me himself, before he left town. This was about six months ago.

Was this before or after you failed to collect the note?

It was long after.

When Isaac Cohn told you this, was you not dunning him?

Yes.

How long were you in business in the City Hall, while Isaac Cohn was in the business below?

Two or three years.

State whether M. S. Cohn was in Isaac Cohn's store clerking for him, or in any capacity in the employ, or in any capacity whatever in that store?

Mr. M. S. Cohn was there awhile in the store of Cohn, on the corner, in the City Hall.

74 State whether or not Isaac Cohn and M. S. Cohn had a quarrel or falling out, within your knowledge?

They had a falling out. One night M. S. Cohn sent his brother and told me to come down to the store. When I got there Isaac Cohn and M. S. Cohn were quarrelling and cursing (this was about 10 at night). When I came in the store I stopped the quarrel. I asked M. S. Cohn "What is the matter?" He said: "John, that d—— thief (meaning Isaac Cohn) wanted to swindle me out of everything I have got." I went between them then and I told Isaac he must let M. S. Cohn have the amount of goods that is coming to him. Mr. Isaac Cohn agreed to it. I then told M. S. Cohn to go behind the counter and pick out some goods; he did so. When he had a certain amount of goods picked out Isaac Cohn was not satisfied to let him have those goods, as they would break his stock. M. S. Cohn then got mad and said to Isaac Cohn: You ——— thief, you brought me over here and promised me that you would give me the business in my own —, and now you want to swindle me out of the little that I and my brother have made.

There were 2 drummers at the store at the time. We made Isaac Cohn and M. S. Cohn set down, and I said that we would settle the matter for them, so we picked out the goods—about $1,200 worth; when we were done M. S. Cohn said that he would not be

75 satisfied until the goods were taken out of the store. The goods were taken up to my house—3 or 4 big boxes. This was 5 or 6 doors below the City Hall, when the division was made.

After the division Isaac Cohn moved into the City Hall, on the corner downstairs.

Don't you know that M. S. Cohn then open a store of his own?

He did.

Are you now prepared to say that M. S. Cohn was in the store under the City Hall with Isaac Cohn?

He was not, and I correct my previous answer in this respect.

State whether at the time of that difficulty with these parties Isaac Cohn and M. S. Cohn did not say that they were partners.

Both of them said they came over here in copartnership.

Do you know whether they are friends with one another?

Yes; they never made friends until when M. S. Cohn was going to Europe. It was at my house and some champ-igne was used on the occasion.

Did not M. S. Cohn go away immediately after the reconciliation?

He left the next day.

Between that and the time of the fire, how often was M. S. Cohn at Pine Bluff?

Once or twice, I think.

How long did he remain?

76 He came here one day, went down in the country and stayed over night, and left the same day.

How near the time of the fire was he here?

It must be 2 years.

After this separation did M. S. Cohn continue to do business here?

No, he did business at Jones' Landing.

Redirect—JOHN BLOOM, by pl'f:

Where is Schramm now?

Up on the Fort Smith road somewhere.

Were you on friendly terms with Isaac and M. S. Cohn at the time they called on you to settle this difficulty?

Yes.

Did you so continue?

Yes, to the last minute.

About what time was it that Cohn—Isaac Cohn—moved his store to the City Hall?

I think it must have been in the spring of the year when Isaac and M. S. Cohn fell out; it was in 1873 or 1874.

You say that M. S. Cohn was a partner in the store of Isaac Cohn; was he a partner in the profits, or was he a full partner?

They divided about even; M. S. Cohn got about $1,200 worth of goods; he got nothing besides the goods that I know of.

77 Where did M. S. Cohn come from when M. S. Cohn and Isaac Cohn made up?

M. S. Cohn came up from the country on his way to Europe.

How long did M. S. Cohn remain in Pine Bluff?

He was here, off and on, since 1873 or 1874.

And further this deponent sayeth not.

JOHN BLOOM.

The further taking of depositions in this cause is continued to the 29th day of January, 1880, at 10 o'clock a. m.

JANUARY 29TH, 1880.

Depositions in this cause resumed this day, pursuant to adjournment.

Deposition of J. W. M. Murphy.

J. W. M. MURPHY, a witness for plaintiff, being duly sworn, deposes and says:

My name is J. W. M. Murphy; by occupation a special U. S. deputy marshal for the eastern dist. of Arkansas, residing at the city of Pine Bluff, and am of lawful age.

I know H. H. Hunn, cashier of the Merchants' and
78 Planters' Bank, Pine Bluff; Isaac Cohn, the def't, and M. S. Cohn, the def't.

What, if any, services did you perform as an officer for the M. and P. Bank of Pine Bluff against said Isaac Cohn in and about a suit between said parties?

In the fall of 1876, after the fire of October, 1876, I had placed in my hands an attachment in favor of the M. and P. Bank against Isaac Cohn. I was then constable of Vanquin township, in Jefferson county, Arkansas. I went from Pine Bluff to Watson station, in Desha county.

I was informed there that the property I sought to attach, which was clothing, would be found in Boschintz'- storehouse.

I went there and found 5 or six large dry goods boxes, marked

Gillupin Bro., Pine Bluff, on the inside of the store, near the back end of the store. The boxes were marked on the end.

I found that the attachment in my hands was not good, as the time had expired, so I went and consulted L. A. Pindau, an attorney at Watson station, and the result was I took out a new attachment to which I made affidavit, and Pindau made the bond and the writ was placed in the hands of the deputy sheriff of Desha county.

Then I walked into the store the next morning and I pointed out the boxes to the deputy sheriff, and he attached them and
79 served a garnishee*t* on 3 persons in the store, one of which was Boschintz, one on his clerk, and the other I don't remember.

The boxes were upon examination found to be empty, but I pointed out the clothing on the shelves, near the boxes.

Boschintz laughed when the boxes were turned over and found to be empty, and said, There are the boxes; take them; I have no use for them.

In a few days after that Mr. Hunn, the cashier of the bank, called me into the bank and said, Come in and get your money; the matter is settled; the little trick you played down there made the money for me.

What quantity of clothing was there in the boxes and what value?

The boxes were about 3x4 feet & 4 ft. high, and there was probably about $500 or $600 worth of clothing; there might have been twice that, for what I know; there was quite a quantity.

Did there appear to be an unusual quantity of clothing in the store?

The store was about 60 or 70 feet long, and there was about 30 ft. of shelving nearest of the boxes filled with clothing.

There was also clothing on the opposite side of the store; that, I don't think, came out of the boxes.

X-Examined:

80 Do you know that any of those goods came [out] of them boxes?

I don't know that they did.

Was Isaac Cohn, the defendant, present at any of the conversations you had there?

No, sir.

Did you go from here with a writ of attachment?

Yes; I took out another out in Desha county and made an affidavit and the bond was also made.

And further this deponent sayeth not.

J. W. M. MURPHY.

81 *Depositions for Plaintiff Continued.*

ISAAC COHN, of lawful age, being duly sworn according to law in behalf of the plaintiff, states:

My name is Isaac Cohn; my place of residence is Fort Smith,

Ark's; my age is 32 years; I have lived in Ft. Smith, Ark., since the 13th day of June, 1877. I come to attend to business for M. S. Cohn at Fort Smith; the said business began when I came here; nobody came with me.

Do I understand you to say that the business was opened by you for M. S. Cohn here?

Yes, sir; I was in charge of the business for M. S. Cohn.

You picked out the building and selected clerks?

Yes, sir; we only had one clerk at that time besides myself.

You made arrangements with the landlord for the rents?

I did, and M. S. Cohn closed the bargain; I kept the books; I have charge of the business here.

When was the business opened here?

I think it was the 28th day of June, 1877?

How long was you here before the business was opened?

Some ten or twelve days; I came from St. Louis, Mo.; I
82 have been here constantly ever since.

How often has M. S. Cohn been down since the business commenced?

Averaged once every six months.

The business now has how many clerks beside yourself?

Five clerks and a porter.

How often since the business has been open has stock been taken?

Estimate has been made whenever M. S. Cohn was here, but no regular stock was taken but once, last November.

How much was on hand then?

From the books it shows between twenty-four and twenty-five thousand dollars, with what was taken by the marshal.

How much stock did you have on hand in the spring of 1879?

It may have been between sixteen and twenty thousand dollars; I think about sixteen thousand. The stock in fall of 1878 was about as large as it was in the spring of 1879, as well as I can remember.

Please refer to your books and accertain what indebtedness was due creditors of the firm in November, 1879, when stock was taken?

I do not know, as I had nothing to do with that part of the business.

About how much was due as far as you know to creditors
83 by the firm in November, 1879?

I have no idea; I do not know; I refer to the creditors of M. S. Cohn; I know no firm.

Here the counsel for the defence instructed the witness as follows: That if it be true that the business to which you referred was solely owned by M. S. Cohn, that in answer to questions put to you regarding this business that you reply that there was no firm; that the business belonged solely to M. S. Cohn, so far as you know.

Did you ever have any conversation with M. S. Cohn as to how much was due creditors that time?

I do not remember of having any conversation on the subject.

How much was due the business in notes and accounts in the fall of 1879 in November?

About twenty or twenty-five thousand dollars; the books will show; I am fully satisfied that it would go to twenty thousand dollars.

How much was due the business in fall of 1878?

I expect it was between eight and twelve thousand dollars; the books are here and will show; in referring to the books I am convinced it was as much as ten thousand dollars in November, 1878.

84 You gave to Mr. Clendening some figures showing what was due the business in November, 1878; please refer to those figures and state what they foot up.

It foots up twelve thousand four hundred and ninety-five dollars.

Please state why you say the indebtedness to the business at that time was only ten thousand dollars.

Because I did not take an exact account; I looked over the books in haste.

Was there anything due the business in November, 1878, on notes?

If there was any notes they were included in the amount given above.

What stock was on hand when the business was begun in 1877?

I think about thirty-five or thirty-seven hundred dollars was sent by M. S. Cohn.

When did those goods arrive?

It may have been the day or the day before business was opened.

Was there any more goods received before the close of the year 1877?

Yes; twenty-four or twenty-five thousand dollars' worth of goods was received before the close of the year 1877, including the goods first received.

Please refer to your ledger from page 1 to 28, inclusive, and state what those pages show?

85 On the right-hand column the ledger shows all goods sent by M. S. Cohn and received at the store here, and on the left-hand column shows what amount I remit-ed to M. S. Cohn, except some freight bills and some accounts paid arround town.

The cotton ac. is not included in this statement; it was kept seperate.

I hereto annex a paper, marked Exhibit A, of 28 pages of the ledger referred to in the above inter-ogatories, and make it a part of this deposition.

Whose handwriting is the writing on the 28 pages of the ledger?

My own.

I find numerous items on the ledger for freight paid; who paid the freight?

I did; they were paid here at Ft. Smith.

I find numerous items for rent paid; where were they paid and who paid them?

They were paid at Ft. Smith; by myself.

Through whose hands did all the items on the left-hand side on the 28 pages of the ledger pass?

They passed through my hands or were paid out by my instructions.

How many clerks were there in the business in the fall of 1878?

Three, including myself.

Please state what salery the clerks received, excluding yourself.

86 One received fifty, the other sixty dollars per month.

What rent was paid for the business?

Forty dollars per month, and continues to be the same up to the first of July, 1880.

We had one clerk beside myself from the time the business commenced and he has been there ever since and has averaged $50 dollars per month salery ever [since] he has been there. Another commenced Aug. 20th, 1877, and has been there continuously ever since; he rec'd the first year $60 p'r month, the next year $800 per year, the next year seventy-five doll's per month. Another one commenced on the 23rd of September, 1879, and stayed two months at $25.00 p'r month. Another commenced the 15th day of September, 1879, and stayed until the 22d of Sept., 1879, at the rate of $75.00 p'r month. Another commenced May 11th, 1880, at $10 p'r month and is still here in the business.

Another commenced on the 27th of October, 1879, and stayed three months at $75.00 p'r month.

The porter commenced May 1st, 1878, at $20 [per month,] up to October, 1879, and had $25 per month since.

They are all paid in full up to the first of July, 1880, except one Dan. Harrington; there is about $500 due him.

I have received out of the business on my own salary about twenty-six hundred and thirty doll's.

87 I have a statement showing settlements with M. S. Cohn in a letter book, which is hereto attached and marked Exhibit "B," and made a part of this deposition.

The book in question is a small memorandum book in which the account is kept, part in ink and part in lead-pencil.

The incidental expenses for running the business, for lights, fuel, advertising, &c., is about $200 per year.

I do not know whether there was any indebtedness when the business started.

The insurance the first year was about $80; the second year, between $125 and $150, and the third year about $200 per year.

The taxes was about one hundred dollars the first year; about $150 the second, and about $200 the third year.

I made the affidavits upon which the taxes were assessed.

What became of the money drawn out by you?

I have got it, except so much as I spent. The Exhibit "B" to this deposition will show what was spent by me.

The insurance, most of it, was paid here, but some of it was paid in St. Louis.

The books that I have here are all the account books that we kept in the store, except a small book in which the city accounts

88 are kept and the cotton book and a book showing the daily

cash sales. There is no other book in which accounts with me was kept.

Cross-examination:

I made reports of the business weekly to M. S. Cohn at St. Louis.

Redirect examination:

I mean by weekly reports that I gave him a statement of the amount of money taken in during the week.

ISAAC COHN.

For Exhibit "A" refer to page "89."

Deposition of Geo. T. Sparks.

GEORGE T. SPARKS, being duly sworn, states:

My age is 32 years; my residence is Ft. Smith, Arkansas; I have lived in Ft. Smith 32 years; I have been in the dry goods business—that is, a dealer in general merchandise, such as dry goods, clothing, boots and shoes, hats, caps, staple groceries; I carried on that business, in partnership with others, for seven years; I am acquainted with Isa-c Cohn; I have known him since June, 1877; he has been doing business in Marble Hall, on Garrison ave., Ft. Smith,
89 Arkansas; general merchandise business, same as I carried on myself. Mr. Isaac Cohn appeared to manage and control the business, so far as I know. I passed by his place of business frequently. I never noticed any sign on the building where the business was carried on. The average profits on the business conducted by myself was about 25 per cent.; that is my impression. We bought our goods in New York city princip-ly. Business was not very good in 1873 and 1874; it got some better in 1875–'76 & '77, and in the years of 1878 and '79 it was good.

I had charge of the building in which this business was carried on. Mr. Isaac Cohn rented the building from me, but the lease was signed by M. S. Cohn. I sent the lease to St. Louis, addressed to M. S. Cohn, and it came back to me signed.

It was sent to St. Louis at Isaac Cohn's instance.

As well as I remember, the rate of taxation for the year 1879 was 3 cents and seven and — half mills. It was a little less than it was the year before; I think, two mills less.

Cross-examination:

We bought goods both regular and irregular; but we bought no goods at auction or sheriff's sale, &c. My estimate of 25 per
90 cent. was not made or based on goods bought at auction and sheriff's sales, &c., but on goods bought irregular at a regular house; for instance, goods out of style, &c.; and we bought as many of them as we could.

I have noticed goods being received at the place of business and they were marked M. S. Cohn. I have also noticed wagons for sale there, and they had M. S. Cohn's name on them, and also the cotton scales in front of the store.

Redirect examination:

I mean by irregular purchasses job lots of goods sold under the market prices.

I was in the house of James Wilde, Jr., and Co., of New York, and bought a lot of irregular goods, and he told me he had shipped a lot to be shipped to St. Louis to be sold. After I got home I noticed some of the same goods in the house of M. S. Cohn; at least some goods from the same house.

My experience with goods bought at irregular sales and job lots were profitable. I do not know whether auction goods are always profitable or not. I never handled them.

GEORGE T. SPARKS.

91 *Deposition of Wm. Breen.*

WILLIAM BREEN, being duly sworn, states:

I am a resident of Ft. Smith, Ark.; my age, 39 years; my occupation is general merchandizing, consisting of dry goods, notions, furnishing goods, hats, caps, boots, shoes, and staple groceries, &c.

I have been in this business in Fort Smith since 1868. The average of profits in my business in 1877, '78, & '79 was about 25 per cent.

The condition of affairs commercially among merchants of Ft. Smith in 1877 & 1878 was not very good, but in 1879 it was good.

I know where Isaac Cohn is carrying on business at Ft. Smith. I don't see no sign on the building where business is carried on.

Mr. Isaac Cohn appears to manage the business. I have known Mr. Cohn ever since he came here.

Cross-examination:

I know that Mr. Isaac Cohn was doing business. I called on him once for a subscription, and he subscribed ten dollars himself, and said he did not know what M. S. Cohn would give; the store belonged to him.

92 (The statement above made objected to by plaintiff's att'y.)

The transaction above mentioned occurred about 2 years ago.

I never saw any sign on the store that I remember of; all I know about Mr. Isaac Cohn's carrying on the business is that I see him there, and he seems to have controll of the business.

I have no means of knowing that he has a dollar in the business.

I am occasionally absent from my business, and leave somebody in charge of my business to manage it when I am away.

In speaking of the 25 % profit is based my opinion upon goods bought in the regular way.

Redirect examination:

When I speak of the 25 per cent. profits I mean the profits of my own business; I have bought some auction goods in the last 3 years; not exceeding $2,000 worth; I bought them in St. Louis.

WILLIAM BREEN.

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EXHIBIT "A."

Stock Purchased.

This is the paper referred to in the deposition of Isaac Cohn, and marked Exhibit "A."

1877.			
May	7.	Heed, Clark & F	11 95
	23.	"	13 70
	14.	"	116 90
	9.	"	10 75
	2.	"	49 93
	10.	M. Stern and Co	72 85
	8.	"	163 95
	16.	"	145 45
	9.	"	5 90
	10.	Faulkner, M. and Co	89 60
April	24.	M. Stern and Co	102 28
May	4.	"	9 00
June	19.	"	33 45
Ap'l	25.	A. J. Lewis & Co	111 50
	26.	"	82 20
June	18.	M. Stern and Co	6 48
May	3.	"	81 14
	18.	" show case	8 00
	18.	Lamp and chandeliers	2 00
	18.	Cash, despatch	1 50
	18.	Dray	2 00
	18.	Cash to store porter	1 00
	15.	M. Stern & Co	6 40
	2.	"	20 90
	22	"	115 55
	27.	A. J. Lewis and Co	69 16
	4.	"	10 33
Ap'l	30.	"	91 09
May	1	M. Stern and Co	209 64
	1	Insurance 30 days	10 00
	1.	M. Stern Co. for cases	3 50
June	22.	S. Londeker	2 1 54
	22.	"	123 10
May	23.	Bill of H., C. and Co. short	13 70
June	18.	Stern bill, M. S. 24 belts, 4.2	1 08
	3.	" 30 yds., cash 4.2	2 25
May	22.	" 12 prs. shoes, 1.12½	13 50
	1.	" 72 prs. suspenders 5c.	3 60
	1.	" 24 " Dr. Scheiber	1 20
	1.	2,000 paper collars by M. S. C.	9 00
June	25.	Short on H. Levi & Sons' thread	10 00
July	9.	D'ft cash	100 50
	3.	"	301 50
	1.	Freight bill	106 95
	3.	"	22 00
	6.	"	12 15
	1.	Spark's bill on am't	30 00
	10.	D'ft to St. Louis	100 50
	14.	"	150 75
	14.	F'g't bill	4 05
	2.	Jas. Baum short	3 00
	6.	A. J. Lewis, mistake	2 00
June	21.	A. Frank & Co., short calico	1 25
July	17.	D'ft on St. Louis	100 50
	5.	"	100 50
	20.	"	100 50
June	21.	Discount of J. Baum	20 10
	25.	" H. Levi & Son	4 50
	3–25.	" Frank & Son	7 86
July	19.	" Lipstadt & Bro	14 70
	23.	D'ft St. Louis	100 50
	18.	F'g't bill	3 40
	21.	"	3 90
	25.	D'ft St. Louis	100 50
	1.	Part rent in advance	10 00
	27.	D'ft on St. Louis	100 50

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Investments.

1877.			
June	22.	M. Lipstadt & Co	552 30
	12.	M. S. Cohn, ticket	14 00
	12.	" cash	50 00
	22.	Cash of S. Brash	60 00
			2,689 01
	21.	A. Frank and Sons	98 59
	21.	"	739 55
	25.	H. Lion and Son	150 75
	26.	M. Rosenfield	87 85
	22.	Joseph G. Moser	12 75
May	23.	H., C. and Co	13 70
July	2.	Joseph Baum	338 20
	9.	H. Lions	9 50
	3.	A. J. Lewis & Co	36 85
	6.	"	91 16
	2.	M. Stern & Co	36 69
June	28.	"	14 07
	29.	"	49 99
July	5.	"	10 17
June	25.	"	7 10
	24.	On 4,000 insurance	60 00
	15.	Cash for ticket	14 00
	22.	A. Frank & Son	39 66
July	3.	"	48 90
	3.	"	64 17
	10.	A. J. Lewis	437 22
	10.	M. Stern & Co	126 92
	12.	"	25 53
	19.	Tyler, Whedon Co	16 20
	7.	A. J Lewis & Co	10 91
	18.	Falconer, Williard Co	19 25
	18.	M. S. Cohn, K. & f'ks	21 65
	23.	Williamson Steward	33 30
1877.			
July	30.	D'ft on St. Louis	100 50
Aug.	1.	"	150 75
	2.	Rent for August	40 00
July	14.	F'g't bill	12 85
			1,860 54
	13.	"	1 50
	26.	"	1 25
	31.	"	4 15
Aug.	6.	"	9 60
	7.	D'ft on St. Louis	261 00
	9.	"	100 50
	7.	F'g't bill	33 40
	9.	"	10 75
	12.	"	10 85
	12.	D'ft on St. Louis	150 75
	15.	"	201 00
	17.	F'g't bill	10 15
	18.	Cash, M. S. Cohn	150 00
	20.	D'ft on St. Louis	100 50
	20.	2 prs shoes ret'd	2 00
	22.	F'g't bill	15 40
	23.	D'ft on St. Louis	100 50
	24.	"	150 75
	25.	Paid on paper bill	33 55
	25.	D'ft on St. Louis	100 50
	28.	"	100 50
	29.	"	100 50
	30.	"	100 50
	31.	F'g't bill	16 20
	31.	D'ft on St. Louis	117 60
Sept.	1.	"	100 50
	3.	Rent for September	40 00
	4.	D'ft on St. Louis	150 75

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July	17.	M. Stern and Co.	30 45
	28.	"	8 40
	28.	H. Lyons and Son	50 35
	24.	"	49 48
	28.	A. J. Lewis Co.	26 40
	24.	"	3 17
	24.	"	25 95
	24.	"	17 60
	24.	A. Frank and Son	163 76
			5,670 11
	26.	Meyer, Bonnerman Co.	228 58
	28.	M. Stern and Co.	18 30
	30.	"	58 78
	25.	"	10 80
Aug.	4.	A. Samuels	61 85
July	28.	A. Frank and Son	16 30
Aug.	3.	L. Lipstadt & Bro.	189 00
	4.	"	105 35
	3.	H. Lyons and Sons	47 00
	4.	"	58 65
	4.	S. Londeker	110 33
July	31.	A. J. Lewis	25 40
Aug.	8.	M. Stern and Co	91 25
	7.	"	64 60
	7.	Commasky	7 50
	10.	M. Stern and Co	38 27
	8.	"	2 40
	8.	A. J. Lewis & Co	17 67
	9.	M. Stern & Co	65 70
	8.	H. Lyons and Sons	96 00
	10.	"	10 00
July	25.	One lot goods ret'd	706 00
Aug.	10.	"	402 50
	22.	J. S. Londeker	220 35

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Aug.	29.	"	12 50
	22.	M. Lipstadt Bro.	58 25
	29.	W. Tyler Co	132 00
	29.	H. Lyon and Son	75 75
	22.	"	101 70
	28.	A. J Lewis & Co.	1'7 10
	30.	M. Sterne & Co	44 25
	30.	"	78 00
	24.	A. Frank & Son	13 95
	24.	"	153 24
Sept.	5.	M. Stern & Co	195 95
	6.	"	41 40
	3.	"	22 42
			9,371 20
	3.	S. Londecker	151 10
	4.	A. J. Lewis & Co	773 13
	12.	M. Spiro	460 00
	14.	Hamilton, Brown Co	78 90
	14.	Whedon, Tylor Co.	30 40
	15.	St. Louis Rubber Co	55 56
	21.	H. Lyons & Son	26 15
	16.	M. Stern & Co	77 00
	20.	"	22 60
	22.	M. Lipstadt Bro.	204 35
	19.	O. J. Lewis & Co	456 19
	25.	Chase and Cabot	219 98
	25.	"	416 20
	24.	H. Lyons & Son	181 46
Oct.	3.	"	74 75
	3.	M. S. Cohn	4 25
Sept.	24.	M. Stern & Co	52 55
	26.	J. Meyerberg & Co	62 08
Oct.	5.	S. Londeker	117 83
	20.	Stock of Barrow Bro	237 50

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	20.	17 suits, no bill	68 00
	9.	M. Stern Co	63 20
	10.	Chick & Co., by Wiener	260 90
	11.	Clayberg, Einstein & Co.	415 00
	10.	A. J. Lewis & Co	58 66
	10.	J. R. Robinson & Co.	77 88
	10.	St. Louis Rope and Bag'g Co.	236 00
	10.	O. J. Lewis & Co	65 65
	11.	Chase & Cabot	280 88

Sept.	6.	Freight bill	4 45
	6.	D'ft on St. Louis	100 00
	7.	F'gt bill	10 75
	8.	D'ft on St. Louis	100 50
	11.	"	100 50
	12.	F'g't bill	3 60
	13.	"	6 60
	13.	D'ft on St. L.	150 75
	14.	"	100 50
			4,555 54
	15.	"	150 75
	18.	F'g't bill	21 50
	18.	D'ft on St. Louis	100 50
	19.	F'g't bill	6 25
	20.	D'ft on St. Louis	100 50
	20.	"	100 50
	27.	"	201 00
	28.	F'g't bill	8 90
	27.	"	7 65
Oct.	3.	Spark's rent for ac	40 00
Sept.	29.	F'g't	8 50
Oct.	5.	"	23 10
	6.	2 b. cotton, 122 net	94 49
	16.	F'g't bill	13 20
	16.	"	5 30
	11.	"	2 65
	17.	"	21 90
	18.	"	20 58
	18.	"	1 30
	10.	"	3 65
	16.	"	21 20
	25.	"	1 25
	23.	"	5 05
	24.	"	6 60
	25.	"	24 50
	25.	"	12 65
Nov.	1.	Rent for November	40 00
Oct.	15.	6 B. C.	271 50
	12.	2 "	103 02
	20.	18 "	864 78
	27.	F'g't bill	10 55
	31.	"	7 80
	31.	"	3 30
	27.	"	15 25
Nov.	2.	"	5 05
	2.	"	24 80
	5.	"	10 00
			6,924 83
	12.	F'g't bill	12 25
	20.	Cash d'ft M. Stern & Co.	700 00
	22.	" Chase & Cabot	220 00
	19.	F'g't bill	2 65
	19.	"	6 75
	19.	"	3 75
	19.	"	12 30
	19.	"	5 85
	8.	Lion & Sons' d'ft	200 00
	8.	Discount on Baum stock	17 00
Oct.	25.	Profit	2 50
Nov.	15.	Discount, Ch. & C	20 85
July	25.	"	10 34
Nov.	27.	Profit of goods	55 75
	22.	Cash to M. S. Cohn	149 35
Dec.	1.	F'g't bill	2 25
	1.	Rent for Dec	40 00
	4.	Cash, Lyons & Sons	200 00
	4.	Frank & Sons	13 75
	5.	D'ft, M. Lipstadt Bros	100 00
Dec.	6.	V'g't bill	3 40
	7.	M. S. Cohn, 20 loads cloaks	41 25
	8.	Discount	16 60
Oct.	30.	Weiner, 11 bales cotton	522 47
	22.	" 6 "	272 20
	30.	" 8 "	378 14
Nov.	7.	" 4 "	176 82
	5.	" 5 "	233 49
	5.	" 4 "	191 55

	12.	Westerman & Uleyer	115 98
	13.	Adam Roth	223 23
	13.	S. R. Odel	21 73
	12.	Chase & Cabot	116 14
	10.	O. J. Lewis & Co	97 06
	13.	Chase & Cabott	19 25
	17.	O. J. Lewis & Co	118 96
	15.	M. Lipstadt & Bro	290 45
			15,612 85
	19.	M. Stern Co	1 50
	22.	"	101 50
	24.	M. Rasenfield	70 35
	25.	T. McGrate & Co	94 49
	23.	M. Stern & Co	276 35
	22.	H. Lyon & Son	178 60
	26.	Chase & Cabott	208 15
	26.	"	229 39
	26.	Miller & Wovley	178 92
	27.	Chase & Cabott	47 15
	26.	G. H. Weir & Co	13 88
	26.	"	235 38
	26.	W. H. Hagarty	216 00
Nov.	6.	M. Stern & Co	445 90
	12.	"	100 50
Oct.	31.	"	333 50

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Nov.	15.	M. Stern & Co	106 22
	14.	"	114 05
	6.	M. Lipstadt Bro	134 70
	12.	Chase and Cabot	24 00
	3.	Dyas, Hewitt & Stone	89 36
	12.	H. Lyon & Sons	66 75
	6.	O. J. Lewis "	108 55
	10.	"	9 28
	14.	"	35 26
	15.	Friedman Bro	290 45
	19.	"	102 90
Aug.	8	Short by mistake	2 40
Oct.	3.	" M. S. C. hats	3 75
	1.	4,000 dolls. insurance	60 00
	1.	Boxes and dray	9 75
Sep.	21.	H. Lyon, new bill	12 20
Nov.	15.	Traveling money, M. S. C.	20 00
Sep.	16.	Goods of Brash	304 53
Nov.	16.	S. Londeker	6 00
	20.	"	54 00
	29.	H. Lyons & Sons	52 75
			19,961 31
	30.	M. Lipstadt Bros	77 70
	30.	4 coats short	32 00
Dec.	6.	Chase & Cabot	123 75
	5.	H. Lyon & Son	56 25
	11.	M. Lipstadt Bro	286 60
	11.	Chase & Cabot	83 44
	11.	"	101 60
	11.	Adam Roth	87 26
	12.	Chase & Cabot	196 54
	12.	"	17 66
	11.	O. J. Lewis Co	82 00
	15.	Joseph Baum	177 50
	14.	W. H. Haggarty	156 38

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1877.			
Dec.	14.	H. Lyons and Son	87 25
	19.	Whedon, Tylor & Co	276 72
	20.	"	106 45
	14.	"	65 46
	10.	R. L. Billingley & Co	125 29
	13.	L. Landeker	242 03
	10.	H. Lyon & Son	93 86
	14.	Falconer Miliard Co	77 60
	15.	"	75 43
Oct.	31.	"	26 75
Dec.	28.	Myer Bros	93 55
	28.	O. J. Lewis & Co	94 10
	26.	"	48 84
	28.	"	53 85
	21.	S. Landeker	52 00
	21.	Alkire & Co	237 23
	27.	H. Lyon & Son	36 00
	5.	" 4 "	197 51
Oct.	26.	" 13 "	621 79
Nov.	16.	" 6 "	237 92
	16.	" 4 "	177 66
	10.	" 18 "	817 58
	13.	" 4 "	173 67
Dec.	6.	F'g't bill	3 05
	7.	"	2 30
			12,767 57
	11.	D'f't to M. S. Cohn	285 00
	12.	F'g't	3 80
	14.	D'f't to M. S. Cohn	215 00
Nov.	19.	1 B. C., Weiner	48 80
	5. 1	" "	41 54
	5. 1	" "	39 22
	5. 3	" "	223 43
	5. 5	" "	140 63
	5. 3	" "	41 17
Dec.	14.	To f'g't bill, Weiner	12 70
	15.	F'g't bill	5 70
	12.	D'ft M. S. C.	6 15
	17.	"	200 00
	17.	F'g't bill	9 65
	17.	"	10 00
	17.	"	11 35
Dec.	17.	F'g't	11 00
	19.	"	9 05
	19.	"	11 15
	22.	D'ft, M. S. C.	500 00
	20.	F'g't	6 00
	26.	D'ft, M. S. C.	300 00
	25.	F'g't	12 25
	31.	"	15 00
1878.			
Jan'y	1.	Rent for Jan.	40 00
	1.	F'g't	18 00
	1.	"	2 65
	3.	"	7 30
	9.	"	10 05
	9.	"	4 35
	15.	D'ft, M. S. C.	100 00
	12	F'g't	33 30
	15.	"	8 50
	16.	"	5 85
	21.	D'ft, M. S. C.	251 25
	25.	"	100 50
	22.	F'g't	3 55
			15,516 46
	30.	D'ft to M. S. C.	300 75
Feb'y	1.	Rent for Feb'y	40 00
	4.	F'g't bill	5 55
	5.	"	3 75
	2.	D'ft, M. S. C.	150 75
	11.	"	150 75
	12.	F'g't	2 65
	14.	"	22 05
	20.	"	8 85
	24.	Cash d'ft, M. S. C.	301 50
Mch.	1.	Rent for M'ch	40 00
	1.	D'ft, M. S. C.	251 25
Feb'y	27.	F'g't	5 70
1878.			
Feb'y	27.	F'g't	11 85
	27.	"	8 50
	27.	"	15 35
M'ch	2.	"	6 75
	7.	D'ft M. S. C.	201 00
	4.	F'g't	4 45
	5.	"	7 80
	5.	"	24 15
	12.	D'ft M. S. C.	150 75
	13.	F'g't	21 30
	13.	"	5 70
	13.	"	6 15
	16.	D'ft Meyer Bros	50 00
	16.	" M. S. C.	100 50
	19	F'g't	4 65
	19.	"	3 80
	19.	"	7 80

	12.	H. Kana & Co.	9 00
	24.	Chase & Cabot	16 50
	28.	Falconer Millard Co	28 80
			23,308 70
1878.			
Jan.	4.	Whedon Tylor Co	16 48
	4.	Head, Clook & F	2 72
	5.	O. J. Lewis & Co.	139 40
	5.	Adam Roth	86 25
	8.	Whedon, Tyler & Co	185 72
	9.	Faulconer, Millard Co	68 18
	10.	H. Lyon & Sons	38 33
	9.	Chase and Cabot	529 34
	10.	"	95 72
	10.	"	6 80
	22.	Tyler, Whedon & Co	129 78
	23.	Cleybourn Einstein	14 25
	12.	M. Stern & Co	8 00

100

	31.	"	49 92
	28.	"	103 34
	24.	"	44 23
Feb.	6.	"	12 00
	5.	"	5 90
	6.	"	22 00
	9.	Chase and Cabot	433 66
	9.	"	22 00
	28.	H. Lyon and Son	12 50
	15.	"	28 50
	12.	Wedon, Tyler Co	48 13
	14.	Morris Meyerstein	113 35
	6.	O. J. Lewis Co	6 75
	7.	"	15 00
	13.	"	40 58
Jan'y	26.	Hemp Gano	9 00
	14	Adam Roth	23 04
Feb'y	5.	Whedon, Tyler Co	23 25
	6.	Falconer, Milliard Co	17 30
	23.	Chase and Cabot	152 82
	23.	"	113 24
M'ch	2.	"	358 63
	2.	"	152 26
	7.	"	25 16
	7.	"	133 84
	9.	"	54 06
Jan'y	21.	M. Lipstadt Bro	189 25
Feb'y	22.	"	71 97
	21.	H. Lyon & Son	156 88
	23.	M. Rosenfield	19 60
	23.	S. Landeker	288 75
	23.	"	68 70
	21.	H'y Peting	288 56
	14.	M. Stern & Co	21 00

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Feb'y	18.	M. Stern & Co	10 20
	28.	J. S. Landeker	51 50
	15.	Whedon, Tylor Co	60 66
	27.	"	202 55
Mar.	5.	O. J. Lewis & Co.	744 23
	5.	Constables' sales	41 26
Feb'y	26.	Hamilton Brown Co	63 00
	12.	O. J. Lewis & Co	10 15
	19.	"	8 25
	26.	"	52 45
M'ch	6.	"	11 88
Feb'y	15.	Lot ladies' hats	5 00
Mar.	4.	W. H. Haggerty	7 60
Feb'y	22.	Morris Meyerstein	63 75
M'ch	12.	O. J. Lewis and Co	123 65
	12.	Whedon, Tyler & Co	12 00
	12.	Adler Bros., N. Y'k	81 00
	13.	O. J. Lewis and Co	3 72
	10.	Ale'r Breen	12 00
	11.	M. Meyerstein	19 25
	11.	Chase and Cabot	28 55
	11	"	18 10
	26.	Meyer Bros.	22 08
	20.	O. J. Lewis & Co	17 30
	19.	"	177 55
Mar.	30.	Chase and Cabot	217 21
	26.	J. G. Wells & Co	271 18
Ap'l	1.	Chase and Cabot	62 80
	1.	"	53 75
	3.	O. J. Lewis and Co	99 16

Feb'y	9.	Wiener & Co., 2 B. C	81 47
	9.	" 1 "	29 41
	9.	" 2 "	76 39
M'ch	22.	F'g't	2 21
	28.	Taxes	73 25
	25.	F'g't	5 10
Ap'l	3.	D'ft M. S. C	301 50
			17,958 84
M'ch	29.	F'g't	3 40
	29.	"	16 85
Ap'l	1.	One month's rent	40 00
	4.	F'g't	5 70
	6.	"	12 55
	9.	"	8 10
	7.	D'ft M. S. C	402 00
	18.	F'g't	6 15
	18.	"	1 25
	18.	"	2 30
Feb'y	10.	Cash for hides & furs	324 57
Ap'l	19.	F'g't	4 00
	17.	"	35 00
	29.	"	17 35
May	1.	Rent for May	40 00
	1.	Tobbacco license	5 00
	1.	F'g't	18 00
	1.	"	18 35
	4.	"	2 80
	9.	"	3 10
	14.	"	6 90
	15.	"	5 10
	20.	"	22 05
	22.	Check of Falconer to M. S.	50 00
	27.	D'ft to M. S. C	100 50
	30.	"	100 50
	29.	F'g't	3 20
	28.	"	8 80
	31.	D'ft to M. S. C	100 50
June	3.	"	100 50
	1.	Rent for June	40 00
May	29.	F'g't	1 75
June	3.	D'ft to M. S. C	100 50
	6.	"	301 50
	8.	"	100 50
	5.	F'g't	14 05
	10.	D'ft to M. S	100 50
	8.	F'g't	5 70
	11.	D'ft to M. S	100 00
	13.	"	100 50
	15.	"	100 50
	19.	" to Laevenstein Bros	182 95
	11.	F'g't	5 25
June	19.	F'g't	5 25
	22.	D'ft to M. S. C	150 75
	26.	"	150 75
	28.	"	502 50
	28.	"	54 00
	29.	"	100 50
	25.	F'g't	6 85
July	1.	Geo. Sparks for July	40 00
	1.	V'g't	29 70
	1.	"	8 50
	3.	Cash, $2,000; insurance	41 00
	5.	D'ft to M. S. C.	150 75
	9.	"	150 75
	10.	"	150 75
	10.	Cash to Herald—advertising	25 00
	15.	D'ft M. S. C	100 50
	6.	F'g't	9 40
	13.	"	3 40
	15.	"	50
	18.	D'ft to M. S. C.	100 50
	19.	"	150 75
	17.	F'g't	2 65
	22.	D'ft to M. S. C	100 50
	20.	F'g't	7 40
	23.	D'ft to M. S. C	100 50
	25.	"	100 50
	25.	F'g't	1 75
	25.	"	14 05
	29.	D'ft to M. S. C	252 25
	29.	F'g't	1 50

M'ch	28.	"	.....	181 60
Ap'l	4.	"	.....	293 78
M'ch	8.	M. Lipstadt [&] Bro...	.....	102 85

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Ap'l	5.	O. J. Lewis and Co.....		52 00
	10.	"	.....	82 35
M'ch	25.	"	.....	73 40
Ap'l	10.	Clayberg, Einstein & Co..	.....	335 00
	12.	"	.....	3 25
	16.	Whedon, Tyler & Co.....		110 28
	26.	O. J. Lewis & Co.....		183 15
	22.	"	.....	78 45
	16.	"	.....	152 95
	18.	"	.....	25 25
	17.	"	.....	93 67
	30.	"	.....	15 80
	23.	"	.....	15 00
	24.	"	.....	359 45
	25.	"	.....	73 56
	23.	M. Meyerstein.....		14 25
	29.	I. Meyersberg & Co.....		119 28
	25.	J. M. Anderson & Co.		86 93
	22.	J. G. Wells & Co.....		104 77
	25.	Westerman & Meyer		103 61
	22.	Chase & Cabot, 30 days		338 36
	22.	"	.....	166 12
May	9.	"	.....	64 25
	10.	M. Lipstadt [&] Bro.....		100 35
	1.	Whedon, Tyler [&] Co.		102 20
	9.	M. Stern & Co.....		51 43
	9.	"	.....	10 70
	11.	"	.....	44 00
	10.	Falconer, Milliard Co...	.....	45 68
	1.	O. J. Lewis & Co.....		32 70
	8.	"	.....	9 24
	23.	"	.....	125 45
	15.	Morris Meyerstein		12 50
	8.	M. Jacobs & Co.....		20 25

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May	15.	M. Jacobs and Co.....		33 75
	30.	Whedon, Tyler & Co		149 50
	24.	O. J. Lewis Co.....		4 50
	28.	A. Frankenthal Bro.....		14 10
	21.	O. J. Lewis & Co		113 10
June	1.	Wheden, Tyler [&] Co		92 45
May	15.	Sam'l Cupples Co.....		12 51
	15.	Dodd, Brown & Co		309 28
	20.	"	.....	13 70
	22.	J. M. Wiener & Co.....		2 28
	27.	B. Loewenstein Bro.....		81 29
June	22.	"	.....	14 19
	6.	"	.....	92 43
	5.	O. J. Lewis & Co		9 25
	3.	"	.....	95 35
	3.	Chase and Cabot		5 00
	3.	"	.....	51 14
	4.	Morris Meienstein.....		17 92
	11.	O. J. Lewis & Co		33 40
	8.	"	.....	66 60
	13.	"	.....	61 50
	20.	"	.....	57 80
	13.	J. C. Wells Co.		106 76
	18.	M. Stern & Co.		55 60
	19.	O. J. Lewis & Co.....		10 15
Jan'y	25.	" 35,537.15 ..		11 00
	27.	Block, Dean Co.....		30 50
	25.	O. J. Lewis & Co		22 00
	3.	A. Frankenthal Bro.....		161 70
	17.	M. Stern & Co.		76 00
	27.	Chase & Cabot.....		35 49
	27.	"	.....	13 65
	24.	"	.....	5 93

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	24.	Bamberger, Bloom & Co		44 18
	24.	"	.....	451 82
July	1.	Chase & Cabot		26 92
	2.	Block, Dean & Co.		146 73
	3.	O. J. Lewis & Co		18 78
	2.	M. Stern & Co		57 64
	3.	"	.....	60 00
	5.	"	.....	31 00
	5.	O. J. Lewis [&] Co.....		15 50
	3.	Chase & Cabot.....		25 83
	29.	"	.....	2 35
Aug.	1.	Rent for Aug.....		40 00
	2.	D'ft to M. S. C.		100 50
Aug.	2.	2 D'fts $130 & one $12, M. S. C.		42 00
	5.	D'ft to M. S. C.....		125 35
	6.	"	.....	100 50
	5.	F'g't.....		2 65
	7.	"	.....	1 55
	9.	"	.....	5 70
	9.	"	.....	6 45
	10.	"	.....	2 35
	12.	"	.....	5 05
	15.	Net proceeds, 71 B. C., 285,298 p'ds.....		2,852 98
	15.	Cash to M. S. C.....		300 00
	17.	D'ft "		100 50
	18.	3 B. C. to Wiener		118 44
Feb'y	5.	5 "	.....	189 77
	1.	3 "	.....	128 00
	4.	1 "	.....	42 78
	7.	3 "	.....	126 44
	9.	2 "	.....	78 26
	9.	5 "	.....	219 66
	12.	5 "	.....	218 18
	7.	1 "	.....	35 46
	10.	1 "	.....	38 01
Jan'y	28.	1 "	.....	39 91
Feb'y	18.	1 "	.....	38 07
	9.	1 "	.....	35 73
	10.	2 net.....		78 91
	14.	2 " "		72 64
	22.	4 " "		167 50
	10.	6 " "		233 04
	14.	3 " "		124 97
	28.	2 " "		78 43
Feb'y	18.	1 " "		30 49
	12.	2 " "		82 37
M'ch	16.	1 " "		33 31
Mar.	30.	1 B. C. net to Wiener		37 83
	18.	2 "		27 60
	25.	2 "		71 43
	25.	7 "		68 52
	29.	8 "		275 53
	9.	4 "		286 25
	6.	2 "		122 13
Ap'l	17.	2 "		70 53
	16.	4 "		78 17
	12.	3 "		142 46
	9.	2 "		103 76
	5.	6 "		70 16
	1.	7 "		228 91
	23.	12 "		250 60
	15.	15 "		437 22
	26.	21 "		468 35
	27.	4 "		695 62
May	14.	1 "		187 23
	11.	4 "		33 74
	27.	2 "		166 95
	28.	1 "		88 31
	18.	1 "		40 13
	18.	2 "		30 40
June	20.	1 "		97 23
July	5.	2 "		44 16
	8.	1 "		76 84
	18.	1 "		35 63
Aug.	3.	1 McS. and V. No.		36 42
M'ch	8.	1 "		39 77
	5.	1 "		39 76
Feb'y	25.	1 "		37 42
M'ch	12.	1 "		31 58
	6.	1 "		39 34
	6.	1 "		37 17
	9.	1 "		38 45
	12.	1 "		29 94
	2.	1 "		31 54
	7.	1 "		35 78
	7.	1 "		37 34
	7.	1 "		39 79
	8.	1 "		39 76
	8.	1 "		48 35
	9.	1 "		38 00

	3.	"	6 42
	8.	M. Lipstadt Bro.	24 00
	13.	"	145 50
	13.	Dood, Brown Co.	50 00
	17.	Chase & Cabot	123 53
	16.	O. J. Lewis & Co.	83 21
	30.	"	103 43
	15.	M. J. Murphy.	2 12
	15.	Calico short.	15 54
	31.	Chase & Cabot.	30 50
	17.	Morris Meyerstein	13 45
	20.	Block, Dean & Co.	51 05
	23.	[illegible]. Baum.	113 40
	28.	M. Stern Co.	34 24
	25.	"	41 30
	30.	"	8 44
	18.	"	15 55
Aug.	1.	"	45 84
	2.	"	20 00
	5.	Dood, Brown [&] Co	94 08
July	13.	Bamberger Bloom	127 66
	25.	B. Loewenstein Bro.	18 25
	25.	" 37,967.28	38 35
Feb'y	13.	Interest ac. Wiener	89 32

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Aug.	20.	O. J. Lewis & Co.	27 75
	8.	Porter, Taylor Co.	107 15
	6.	O. J. Lewis Co.	63 50
	6.	M. Stern & Co.	28 70
	40.	Chase & Cabot.	15 38
	10.	"	1 31
	23.	Clayburn Einstein Co.	449 00
	20.	I. H. Plant	65 00
	20.	M. Stern & Co	91 00
	5.	"	5 80
	24.	Dood, Brown & Co.	25 25
	26.	Morris Meyerstein	135 95
	30.	Chase & Cabot	580 09
	30.	"	280 44
	30.	"	91 25
	19.	"	362 36
	19.	"	243 49
	24.	"	110 22
	31.	"	122 00
	30.	"	176 28
Sept.	2.	Dood, Brown Co.	31 75
	2.	"	184 13
	2.	K. Wallack Son	301 80
	4.	Hamilton, Brown Co.	382 00
	12.	M. Lipstadt Bro	52 00
	6.	J. M. Anderson Co.	126 14
	3.	Sam'l Cuppler Co.	33 15
	5.	Flohr Hymios Co.	57 00
	5.	J. M. Wiener Co.	130 00
	17.	M. Stern & Co.	62 15
	20.	M. Lipstadt Bro.	59 50
	17.	Jacob Bros. & H.	144 00
	19.	O. J. Lewis & Co.	30 50

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Sept.	20.	O. J. Lewis & Co.	61 00
	4.	"	39 60
	16.	Horrace Stone Co.	63 00
	23.	J. M. Anderson Co.	134 17
	13.	O. J. Lewis Co.	47 35
	6.	" 43,012.06	32 80
	21.	J. M. Wiener Co.	239 00
	11.	Whedon, Tyler Co.	337 80
	17.	O. J. Lewis & Co.	265 50
	7.	Dodd, Brown Co.	76 82
	19.	Falconer, Milliard Co	77 08
	7.	Dodd, Brown Co.	12 05
	2.	John W. Wells Co.	147 59
	19.	A. Bejosh, ladies' hats.	15 50
	3.	O. J. Lewis Co.	1,186 50
	2.	Chase & Cabot	142 17
	2.	"	58 86
	2.	"	87 03
	16.	"	175 38
	7.	"	47 37
	21.	"	18 00
	21.	"	251 48
	17.	K. Wollock & Son	74 35
	6.	Daws & Fitch	51 25
	26.	H. Lyon & Son.	167 81
	7.	1 "	38 98
	9.	1 "	43 77
	9.	1 "	28 39
	9.	1 "	35 23
	9.	1 "	37 57
	9.	1 "	42 03
	2.	1 "	42 99
	2.	1 "	44 77
	9.	1 "	42 56
	8.	1 "	48 27
	2.	1 "	37 16
Feb'y	8.	1 "	44 33
	28.	1 "	28 67
	28.	1 "	36 53
M'ch	2.	1 "	31 18
	1.	1 "	43 57
	1.	1 "	39 08
Feb'y	28.	1 "	31 30
Aug.	19.	D'f't M. S. C.	100 50
	15.	F'g't	2 35
	21.	D'f't M. S. C.	100 50
	26.	"	501 21
	24.	F'g't	6 85
	23.	"	19 80
Aug.	28.	D'f't M. S. C	150 75
	28.	Cash by S. Baer to M. S.	60 00
	30.	D'f't J. S. Goss to Center & Co	200 00
Sep.	2.	Cash D. McKibben to M. S.	100 00
Aug.	30.	F'g't.	5 30
	30.	"	3 80
	29.	"	7 35
Sept.	3.	Rent, Sept.	40 00
	6.	D'f't M. S. C.	100 50
	4.	F'g't.	45 5
	6.	"	9 80
	6.	"	9 25
	6.	"	7 85
	10.	Cash, Geo. Sengel, 4,000 Ins.	81 00
	10.	F'g't	36 25
	10.	"	31 20
	10.	"	12 10
	10.	"	11 40
	10.	"	16 25
	14.	"	17 33
	14.	"	6 95
	18.	D'f't M. S. C.	201 00
	17.	F'g't	9 80
	21.	"	2 95
	25.	"	12 75
	23.	"	6 15
	21.	Hides & wool sold Weiner.	40 56
	28.	F'g't	9 50
	30.	"	6 70
	27.	"	13 30
	27.	"	45 65
	27.	"	10 15
Oct.	1.	"	6 00
Sept.	6.	Rent for Oct.	40 00
Oct.	4.	1 lot hides to Wiener.	51 65
	6.	F'g't	18 25
	6.	"	5 31
	6.	"	9 10
	10.	Cash to att. for goods.	25 95
Sept.	30.	W. I. Bourne, 1 B. C. oil.	10 25
	5.	"	10 45
	7.	F'g't	6 44
	8.	"	2 31
	11.	"	13 75
	11.	"	3 80
Oct.	12.	"	5 96
	12.	"	13 15
	14.	"	14 00
	15.	"	1 95
	19.	"	25 05
	22.	"	9 80
Aug.	26.	John Gardner	16 00
Nov.	1.	To D. A. McKibben	76 93
	1.	To Pappenheimer	14 50
Oct.	29.	"	23 25
	31.	To W. N. Ayers & Co.	13 80
Nov.	1.	Rent to Sparks, Nov.	40 00
	2.	W. N. Ayers	6 90

	27.	Hamilton, Brown & Co.	222 50
Aug.	31.	Clayberg, Einstein Co.	52 00
Sept.	23.	Dawes and Finch	147 00
	26.	M. Lipstadt Bros.	150 00
	18.	J. H. Meyers	87 50
	5.	Daws and Finch	70 00
	24.	Chase & Cabot	57 10
	24.	"	223 86
	27.	"	38 63

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Sept.	23.	Block, Dean & Co.	60 00
Oct.	2.	"	257 85
Sept.	21.	M. Lipstadt & Co.	65 00
Oct.	5.	Sam'l Cupples Co.	47 67
	9.	"	10 95
	2.	M. Rosenfield	118 40
	5.	O. J. Lewis Co.	126 98
	8.	"	23 75
	4.	"	35 13
	15.	"	222 90
Sept.	24.	" 48,792.29	141 50
Oct.	14.	Miller & Werley	158 85
	14.	J. M. Anderson	230 08
	3.	Falconer Milliard	215 93
	13.	J. M. Anderson	284 04
	13.	S. Cuppler & Co.	94 12
	30.	O. J. Lewis & Co.	13 86
Nov.	5.	"	77 25
	22.	"	11 48
	3.	"	286 30
	7.	"	285 75
	6.	"	36 60
	14.	"	87 20
	29.	"	25 25
	19.	"	48 65
	21.	"	114 10
Oct.	24.	"	117 65
	20.	"	3 08
	28.	M. Stern & Co.	48 75
	23.	"	100 50
Nov.	2.	"	63 30
	26.	"	108 30
	19.	"	91 80

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Nov.	7.	"	28 40
	12.	"	80 10
	27.	J. Meyerberg Co.	296 83
	13.	H. Lyon & Son	152 10
	8.	"	144 00
	2.	M. Lipstadt Bro.	205 25
Oct.	20.	Cohn, Wompfield Co.	124 80
Nov.	11.	Whedon, Tylor Co.	38 10
	26.	"	27 20
	4.	Cohn, Wompfield Co	277 00
	21.	Jacobs Bros. & Hoffman	105 00
	29.	J. M. Anderson Co.	54 68
	19.	"	206 99
Oct.	25.	"	122 25
Nov.	22.	A Frank & Son	17 42
	21.	H. Lyon & Son	114 38
	9.	J. M. Anderson 53,495.11	105 08
	15.	M. Lipstadt Bros	57 25
Oct.	18.	H. Lyon & Son	9 50
	5.	"	70 20
	26.	M. Lipstadt Bros.	176 55
Nov.	2.	J. H. Meyers	322 75
	18.	M. Meirstein.	42 50
	20.	M. Lipstadt	26 00
	15.	Whedon, Tylor Co.	140 15
	12.	"	10 96
Oct.	25.	Dodd, Brown Co.	8 00
	25.	"	14 05
	23.	"	24 00
	22.	"	14 27
	22.	"	81 85
Oct.	25.	Chase and Cabot	305 99
	25.	"	306 62
Nov.	22.	"	95 13
	2.	F'g't	8 65
	7.	"	9 80
	7.	"	2 10
	7.	"	30 05
	3.	"	4 35
	5.	"	2 50
	7.	"	6 70
	7.	"	3 10
	12.	"	7 35
Nov.	13.	F'g't	26 10
	13.	"	5 85
	13.	"	3 58
	16.	"	15 70
	19.	"	24 40
	19.	"	12 50
	20.	"	15 75
	21.	"	10 35
	25.	"	11 00
	25.	"	10 80
	27.	D. A. McKibben	13 85
Dec.	2.	Rent for Dec.	40 00
	2.	W. W. Ayers & Co.	6 90
	2.	J. Pappenheimer	7 25
	2.	F'g't	9 10
	5	D'f't Pappenheimer, M. S.	100 00
Nov.	30.	F'g't	8 15
	30.	"	6 55
Oct.	26.	"	4 10
Dec.	3.	"	10 45
	2.	Cash to McLoud	32 65
	16.	M. S. D'f't Papp	250 00
	16.	" Amer. Co	25 00
	11.	F'g't	5 70
	13.	"	12 85
	16.	"	6 75
	18.	"	5 05
	27.	Cash to M. S. Cohn	350 00
	25.	D'f't Papp., M. S. C.	100 00
	28.	" E. W. King, M. S. C.	100 00
1879.			
Jan'y	3.	" Cash to M. S.	150 75
	6.	" "	201 00
1878.			
Dec.	30.	F'g't	5 75
1879.			
Jan'y	1.	Cash, Bocquin & R	14 65
	1.	Atkinson, T., Bros.	24 62
	1.	Dr. Nathan	5 75
	1.	Pappenheimer	3 51
	1.	Rent for Jan'y	40 00
	1.	Guller & Brunoldi	5 50
	1.	D. A. McKibben	16 10
	3.	F'g't	1 30
	9.	D'f't to M. S. C.	100 50
	7.	F'g't	9 25
	8.	"	3 80
	13.	D'f't to M. S. C.	100 50
	15.	" "	201 00
	15.	F'g't	6 70
	20.	D'f't to M. S. C.	150 75
	21.	" "	77 50
	21.	" "	301 00
	27.	F'g't	8 80
Feb'y	1.	Rent for Feb'y	40 00
Jan'y	25.	F'g't	4 35
Feb'y	5.	McKibben	9 30
	6.	P'd Sandels for McG., S. V.	47 40
	5.	F'g't	13 05
	5.	"	5 25
	8.	"	12 60
'78.			
Dec.	12.	To Bourne	30 13
'79.			
Feb'y	10.	Cash by A. Wiener	25 00
	8.	F'g't	4 80
	13.	Bourne, 1 b. oil	10 71
	11.	F'g't	3 85
	11.	"	5 55
	12.	"	3 50
	13.	"	2 50
	15.	"	8 85

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1879.				
Nov.	22.	Chase and Cabot		21 00
	22.	"		125 00
	16.	"		121 79
	16.	"		13 13
	16.	"		182 30
Oct.	28.	"		54 34
Nov.	9.	"		269 95
	7.	"		60 03
	13.	"		126 53
	9.	"		54 14
	7.	"		43 97
	13.	"		195 10
	20.	H. Lyon & Son		76 57
Oct.	25.	O. J. Lewis & Co		68 40
	24.	"		117 65
Dec.	6.	H. Lyons & Son		34 00
	17.	Chase & Cabot		41 33
	17.	"		50 70
	14.	"		101 38
	7.	"		128 34
Nov.	22.	"		65 71
Dec.	7.	"		6 00
Nov.	27.	Stern & Waldheimer		66 50
Dec.	5.	O. J. Lewis & Co		92 50
	5.	Pring and Cohn		43 15
	6.	J. Baum		61 50
	5.	M. Stern Co		16 32
Nov.	27.	Block, Dean Co		36 60
Dec.	11.	J. M. Wiener Co		110 54
	24.	"		95 76
1879.				
Jan'y	3.	J. M. Anderson Co		151 67
	30.	M. Stern Co		37 09
	3.	O. J. Lewis Co		93 00

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Jan'y	8.	O. J. Lewis & Co		38 50
	15.	M. Stern & Co		41 80
	31.	J. M. Anderson		140 19
Feb'y	1.	A. Frank & Son		90 48
	1.	Kramer & Lath		18 00
	1.	Cabot & Chase		197 48
	1.	"		23 92
Jan'y	15.	Hill Fontaine		92 31
Feb'y	5.	Chase & Cabot		20 63
	5.	"		2 25
	5.	"		30 13
	4.	"		60 00
	11.	"		176 15
	11.	"		19 94
	11.	"		3 00
	1.	"		174 87
	1.	"		60 36
	28.	"		110 44
M'ch	10.	"		119 34
	1.	"		556 18
	1.	"		75 26
	3.	"		183 91
	3.	"		63 35
Feb.	15.	Jos. Baum		60 25
	25.	L. Levenson Co		270 00
	25.	D. A. Sahlein Co		60 00
	21.	Flusher Bros		403 07
	5.	A. Frank & Son		5 00
	5.	"		43 80
	8.	J. M. Anderson & Co		97 94
	11.	J. Meyberg		2 00
M'ch	3.	M. Meierstein		37 50
Feb'y	15.	Miller and Worley		163 19

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Feb'y	3.	M. Stern and Co.		45 45
	4.	"		25 05
	14.	"		6 50
	6.	"		100 25
	26.	"		11 50
	26.	"		104 80
	28.	J. M. Anderson		179 19
	18.	"		96 20
M'ch	1.	"		58 89
Feb'y	24.	Falconer, Milliard Co		29 55
	10.	Clayberg, Einstein Co		15 50
M'ch	4.	O. J. Lewis Co.		145 30
Feb'y	5.	Dodd, Brown & Co		15 00
	5.	"		6 01

1879.				
Feb'y	18.	F'g't		4 70
	19.	"		2 50
	20.	"		8 15
	22.	D'f't M. S. C		100 00
	22.	F'g't		5 45
	27.	D'f't M. S. C		300 75
	28.	" Fayetteville		207 56
	28.	F'g't		6 55
M'ch	4	"		4 70
	5.	"		10 85
	5.	"		4 55
	5.	"		31 95
	6.	"		9 85
	6.	"		7 39
	7.	"		11 80
	12.	"		2 80
	14.	"		5 50
	14.	"		5 10
Jan'y	15.	D'ft on Hill Fontaine		73 31
M'ch	1.	Subscription paper		1 00
Feb'y	11.	R. I. Dickens		20 00
M'ch	1.	D. A. M. Kibben		40 30
Feb'y	4.	McKibben		28 75
M'ch	1.	W. N. Ayers Co		6 90
	1.	J. Pappenheimer		18 00
	1.	Rent for M'ch		40 00
	1.	M. Wolf		11 75
	1.	S. McLoud		40 00
	1.	New Era Sub		2 00
	17.	F'g't		10 40
	17.	"		2 50
	20.	D'ft M. S. C		300 75
	21.	"		200 50

M'ch	19.	F'g't		3 65
	19.	"		1 00
	24.	3 d'fts to M. S., 36, 54, 54, 87		144 87
	25.	1 "		200 00
	28.	"		64 00
	27.	F'g't		7 21
	26.	"		38 62
	27.	"		6 50
	27.	"		39 86
	29.	"		19 50
	29.	"		13 90
	31.	"		5 55
	31.	"		6 05
Ap'l	1.	Rent to Sp'ks		40 00
	1.	F'g't		6 65
	1.	"		8 30
	1.	"		3 65
	5.	D'ft M. S. C		100 50
	5.	Purson d'ft M. S. C		66 00
	7.	Cash d'ft "		100 00
	5.	2 f'g't bills		4 60
	7.	1 "		2 30
	11.	D'ft M. S. C		201 00
	11.	F'g't		3 65
	11.	"		13 75
	14.	D'ft M. S. C		150 75
	15.	"		100 50
	17.	"		501 25
	14.	F'g't		6 19
	17.	"		2 06
	17.	"		4 55
	19.	"		15 50
	23.	"		3 35

Ap'l	23.	F'g't		15 45
	23.	"		25 05
	23.	"		7 50
	25.	D'f t M. S. C		100 25
	24	F'g't		11 50
	30.	"		3 50
May	1.	Rent for May		40 00
Ap'l	28.	F'g't		1 50
	25.	"		18 08
	30.	"		7 03
	1.	Guler & Brunoldi		2 25
	1.	W. N. Ayers Co		6 90
	1.	P. R. Davis		5 60
	1.	John Gardner		4 50

M'ch	3.	K. Wallock, Son Co.	599 50
	5.	Fleischer Bros	139 20
	13.	Chase & Cabot	195 59
	21.	"	44 60
	25.	"	235 38
	25.	"	174 66
	21.	"	106 52
Ap'l	5.	"	124 07
	5.	"	89 11
	10.	"	93 92
	10.	"	45 42
	16.	"	313 13
	16.	"	70 53
	19.	"	345 20
	19.	"	19 36
	19.	"	68 09
	26.	"	31 61
	26.	"	39 12
Mar	31.	Wm. Ballin & Co	129 02

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Ap'l	12.	Lipstadt Bros, 65,308.42	238 42
	15.	Guy, Kumbrough & Co	94 70
	17.	Hamilton, Brown "	43 20
	4.	M. Lipstadt "	6 00
	3.	Klein & Herder	52 75
M'ch	24.	Morris Myerstein	39 35
	24.	J. M. Anderson Co	101 67
	23.	"	170 58
	26.	Kreft, Homes & Co	86 43
Feb'y	26.	J. M. Anderson "	113 55
Ap'l	15.	Kreft & Holmes "	260 58
M'ch	24.	Miller & Worley	74 81
	26.	M. Sely & Co	60 35
	21.	"	171 80
A'pl	19.	S. Schwab & Co	163 40
M'ch	27.	J. Meyberg "	170 80
Ap'l	9.	New Engl. Jewellery Co	17 00
	17.	Otterback & Knap	69 60
	17.	M. Stern & Co	17 00
M'ch	15.	"	40 20
	30.	"	10 94
	14.	"	122 20
	26.	"	75 80
Ap'l	3.	"	6 00
	12.	"	29 45
	17.	"	95 80
M'ch	24.	"	13 00
	22.	"	94 00
	14.	Geo. A. Clark Bros.	275 00
	27.	Hamilton, Brown Bros	160 00
Ap'l	16.	Dodd, Brown "	126 97
	16.	"	2 85
	16.	"	59 59
	17.	"	22 50

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Mar.	24.	Dodd, Brown Co	16 58
Ap'l	2.	Libby and Williams	16 05
Mar.	20.	O. J. Lewis and Co	4 55
Ap'l	9.	"	139 06
	10.	" 68,613.16	233 75
	2.	"	420 32
Mar.	25.	"	86 50
	13.	"	36 45
	18.	"	87 30
Ap'l	23.	"	766 65
May	7.	"	56 15
	21.	"	4 68
	9.	"	16 80
	27.	"	24 58
June	12.	"	136 85
	13.	"	48 80
	17.	"	85 60
May	14.	M. Stern Co	123 35
	26.	"	145 50
	31.	"	37 87
June	3.	"	163 10
	5.	"	39 65
	17.	"	183 00
	20.	"	168 82
	24.	"	136 30
	27.	Horrace Stone Co	177 28
May	6.	Miller & Worley	251 44
June	18.	"	162 82
	9.	Bamberger Bloom	58 95
	9.	"	202 16
	14.	M. Lipstadt	136 50
May	20.	Ham, Brown Co	75 60
June	6.	"	60 25
	1.	Limberg Bros	2 95
M'ch	1.	W. G. Bower	20 90
	1.	McKibben	19 10
Ap'l	30.	"	8 30
May	1.	Haglin & Pape	4 55
	5.	D'ft to M. S.	351 00
	9.	F'g't	23 40
	9.	"	2 35
	1.	Taxes	105 00
	1.	Tobbacco lincense	5 00
	12.	F'g't	10 75
	15.	D'ft Miller & G. M. S.	31 00
	14.	F'g't	9 00
	21.	"	15 75
	24.	D'ft S. M. C.	150 75
	26.	"	100 50
	29.	"	100 50
	17.	F'g't	2 25
	23.	"	6 19
May	31.	D'ft M. S. Cohn	125 60
	30.	F'g't	2 65
	30.	"	5 80
June	6.	D'ft M. S. Cohn	150 75
	2.	F'g't	5 10
	9.	"	10 80
	9.	"	7 20
	11.	D'ft M. S. Cohn	150 75
	11.	"	100 50
	11.	F'g't	2 40
	14.	D'ft M. S. C.	20 00
	14.	"	100 50
	14.	Pension d'f't to M. S.	30 00
May	23.	Cash to M. S., 63 head cattle	545 29
	17.	" " hides and wool	95 69
June	17.	" d'ft to M. S	100 50
	13.	" f'g't	3 65
	19.	" d'ft from Collins, M. S	169 50
	20.	" " to M. S	351 75
	20.	" " "	71 56
	13.	" for wool, M. S	63 25
	24.	" d'ft "	100 50
	18.	" f'g't	13 35
	18.	" "	10 85
	23.	" "	5 75
	20.	" "	11 20
	23.	" "	7 70
	26.	" d'ft M. S.	201 00
	25.	" f'g't	7 70
	14.	" for cattle, M. S	132 95
	14.	" " sheep "	189 17
	27.	" f'g't	2 40
	27.	" "	1 85
	30.	" "	1 50
June	30.	F'g't	5 25
	30.	2 C. thread bill	6 51
	30.	F'g't	5 40
July	3.	D'ft to M. S.	150 75
	5.	"	100 50
	2.	F'g't	4 40
June	30.	F. Pappenheimer	62 35
May	3.	Independent	3 00
July	1.	McKibben	2 20
May	28.	Herald	5 55
	1.	J. Gardner	7 50
	1.	Rent to Sparks, May	40 00
June	1.	"	40 00
July	1.	"	40 00
	1.	Ayers Co	11 15
	1.	S. McLoud	19 67
	1.	H. Kuper	13 50
June	1.	J. Gardner	31 50
	1.	Allmyer Co	3 50
July	5.	D'ft M. S. C.	116 67
	7.	F'g't	1 50
	10.	D'ft M. S. C	63 56
	11.	D'ft N. S. B'd, M. S. C.	119 30
	11.	2,000 insurance	40 00
	12.	D'ft M. S. C	50 00
	11.	F'g't	1 50
	11.	"	8 70
	11.	"	4 80
	16.	"	2 40
	16.	"	7 60
	14.	"	13 50
	16.	"	2 40
	18.	Cash to M. S. C.	222 79

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M'ch	24.	Hamilton Brown		60 25
Ap'l	2.	Clayberg Einstein		148 63
M'ch	20.	J. Meyberg Co.		70 35
Ap'l	7.	G. White & Co.		143 50
June	10.	M. Myerstein		10 00
Sep't	30.	Cohn Wamfield		148 80
June	20.	L. C. Watsworth		113 00
	2	Frolich and Decker		41 10
May	1.	Downs & Finch		187 50
	7.	J. M. Anderson Co		129 00
	8.	"		167 25
	5.	"	73,708 70	81 29
June	13.	"		167 88
	4.	Bill of M. S. C.		22 16
	20.	Clark Bros		275 00
	25.	J. H. Plant		28 70
	25.	W. H. Hagerty		17 50
May	9.	Chase & Cabot		178 48
	24.	"		17 40
June	3.	"		201 63
	3.	"		39 29
	14.	"		22 50
	25.	"		100 57
	25.	"		72 50
	19.	"		196 41
	19.	"		8 25
	30.	M. Stein & Co.		10 40
	30.	"		11 00
July	1.	"		82 50
June	30.	Chase & Cabot		306 97
July	3.	"		145 00
	3.	Dodd, Brown Co		72 17
	11.	A. Bejah		33 00

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July	11.	Sharb and Roland		116 24
	9.	Dodd, Brown Co.		528 71
	10.	Chase & Cabot		160 05
	1.	"		66 77
	9.	Horrace Stone Co.		58 50
	8.	J. M. Anderson Co.		182 37
	29.	Dodd, Brown Co.		79 51
	29.	O. J. Lewis Co.		6 85
	26.	S. Schwab & Co.		60 45
	30.	Hamilton Brown Co.		116 40
	28.	Chase & Cabot		52 32
	26.	Meyer Bros.		68 90
	12	Chase & Cabot		19 70
	22.	"		124 30
	22.	"		10 00
	31.	Printer		2 35
	31.	J. Meyberger	77,773,66	140 46
	30.	J. Baum & Co		128 10
	23.	J. M. Anderson & Co.		120 74
	26.	"		12 40
Aug.	2.	M. S. Cohn		93 75
	1.	Chase & Cabot		32 25
	15.	"		28 50
	15.	"		45 99
	15.	"		290 56
	21.	Golden Eagle cloth store		13 50
	2.	J. Meyberg & Co.		224 27
	1.	Dodd, Brown [&] Co.		16 80
	4.	Miller & Worley		194 36
	2.	Block, Dean Co.		73 50
	20.	M. Lipstadt Co.		552 45
	13.	Wolfstein & Ross		373 00
	22.	M. Stern & Co.		276 79

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Aug.	7.	M. Stern & Co		68 40
	19.	Hamilton Brown Co.		407 00
	19.	Goodbar & Campine		638 40
	14.	Dodd, Brown Co.		25 00
	19.	J. Baum Co.		246 10
	19.	"		96 00
	1.	J. M. Anderson Co.		166 16
	8.	Dodd, Brown Co.		107 72
	8.	Chase & Cabot		15 48
	13.	Schwarz & Jevofsky		983 25
	8.	Dodd, Brown Co.		145 50
	29.	Chase & Cabot		38 38
	1.	"		227 23
	27.	"		294 35
	27.	"		61 63
	19.	"		668 04
	22.	D'ft M. S. C.		201 26
	21.	"		150 75
	4.	"		18 75
	25.	"		150 75
	23.	F'g't		16 20
	23.	"		1 10
	21.	D'ft M. S. C		50 00
	29.	"		150 00
	28.	F'g't		5 80
	28.	"		7 65
	30.	D'ft Gold-mith, M. S. C.		200 00
	31.	D'ft B. & R		621 00
Aug.	4.	D'ft Goldsmith, M. S. C.		200 00
	4.	F'g't		26 60
	12.	D'ft Goldsmith, M. S. C.		200 00
	8.	F'g't		14 35
	8.	"		24 15
	6.	"		10 05
	12.	D'ft to M. S. C.		100 00
	13.	"		102 45
	13.	"		100 00
	13.	"		100 00
	15.	"		100 50
	16.	"		100 50
	16.	"		200 00
	13.	F'g't		8 15
	11.	"		6 45
	18.	D'ft M. S. C.		401 50
	2	"		100 00
	22.	F'g't		4 05
	15.	"		37 04
	22.	"		35 71
	27.	"		23 10
Aug.	27.	F'g't		20 51
	31.	D'ft, N. G to M. S		400 00
	27.	F'g't		19 40
	27.	"		27 65
	27.	"		13 75
	27.	"		6 52
	27.	"		31 60
	27.	"		6 05
Sept.	1.	Rent for Sept.		40 00
Aug.	1.	"		40 00
Sept.	2.	D'ft, N. G. to M. S		300 00
Aug.	30.	F'g't		19 95
	30.	"		9 75
	30.	"		10 18
	27.	"		10 10
Sept.	2.	"		10 05
Aug.	30.	"		24 60
Sep.	1.	"		4 05
	3.	"		2 45
Aug.	27.	"		5 40
Sep.	2.	"		4 50
	5.	"		3 10
	3.	"		9 00
	8.	"		23 55
	11.	Cash on U. S. bond, M. S.		119 40
	12.	F'g't		1 98
	13.	"		17 20
	15.	"		13 20
	17.	"		2 93
	17.	"		17 20
	26.	Dunham, d'ft to M. S.		47 15
	17.	F'g't		137 75
	22.	"		27 70
	23.	"		1 70
	19.	"		4 85
	23.	"		2 90
	20.	"		8 70
	29.	"		16 85
	27.	"		3 85
	27.	"		6 85
	27.	"		1 75
	23.	"		39 80
	30.	"		15 95
	30.	"		9 38
	30.	"		4 40
	30.	"		12 60
	30.	"		8 30
	30.	"		2 05
	30.	"		2 95

	6.	Dodd, Brown & Co	171 82
	19.	J. H. Plant & Co	454 64
	19.	W. H. Haggarty	93 00
	30.	Walker Bros	145 15
	7.	Fleischer Bros	1,040 80
	26.	S. Schwab & Co	254 90
	29.	Meyerberg Co.....86,801,17	192 60
June	30.	M. Stern & Co	49 08
Aug.	19.	J. M. Wiener & Co	992 50
	19.	Chase & Cabot	108 31
	22.	M. Sterne & Co	31 60
Sep.	2.	J. M. Wiener & Co	11 55
Aug.	21.	John Dunham	47 15
	25.	A. Spierd	185 75
	30.	M. Lipstadt Co	72 40
	27.	M. Rosenfield	130 00
	30.	Walker Bros. & Co	35 00

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Aug.	21.	J. A. Reider & Co	65 99
Sept.	3.	"	20 97
	6.	Fleischer Bros	117 00
	2.	J. M. Anderson	270 38
	1.	Chase & Cabot	14 17
	12.	Selz, Schwab Co	162 00
	10.	Rice, Stix & Co	264 65
	10.	"	301 55
	10.	"	103 56
Aug	30.	"	588 41
	26.	"	77 86
	20.	"	128 95
	26.	"	529 24
Sept.	20.	S. Cupples Co	87 15
	24.	M. Rosenfield Co	65 95
	25.	J. Meyerberg & Co	132 70
	16.	Rice, Stix "	16 25
	4.	J. M. Anderson "	186 04
	16.	Rice, Stix "	26 97
	15.	" "	234 45
	25.	Sam'l Cupples "	17 23
	25.	Horrace Stone "	138 50
	25.	M. Stern "	248 00
	20.	S. Cupples "	55 33
	24.	Eckerly Bros	49 13
	25.	Rice, Stix & Co	126 28
	25.	Chase & Cabot	72 03
	5.	O. J. Lewis Co	26 10
	22.	J. M. Anderson	330 22
			92,952 57
	23.	Downs & Finch	256 00
	23.	"	69 00
	25.	Hamilton Brown	488 00
	25.	O. J. Lewis & Co	43 50

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	17.	S. Schwab & Co	81 50
	17.	Chase & Cabot	19 30
	6.	K. Wallock & Son	777 08
	11.	Cherry O. Carver & Co	1,072 00
	10.	O. J. Lewis & Co	589 65
	16.	Chase & Cabot	394 82
	16.	"	349 18
	24.	K. Wallock & Son	136 63
	29.	"	162 00
	19.	"	197 08
	22.	Kelley Bros	245 60
	23.	Chase & Cabot	63 65
Oct.	9.	"	273 67
	11.	J. H. Plant	136 60
	17.	J. M. Anderson Co	153 63
	28.	Hamilton, Brown Co	519 50
	3.	Daws & Finch	60 50
	2.	Hamilton Brown	114 50
	11.	K. Wallock & Son	52 80
	11.	Meyer Bros	90 95
	18.	Celler & Deal	173 25
	27.	M. Meyerberg & Co	482 58
	30.	Flohr Hymus & Co	113 93
	28.	A. Spiro	96 00
	30.	Rice, Stix & Co	72 19
	27.	B. Lowenstein	104 75
	20.	Rice, Stix & Co	721 18
	23.	"	10 80
	23.	"	265 50
	24.	Chase & Cabot	293 24

Oct.	7.	"	8 53
	7.	"	4 70
	4.	"	1 50
	7.	"	3 14
	14.	"	10 40
	15.	"	3 83
	14.	"	2 35
	15.	"	5 10
	18.	" Clark thread	5 93
	10.	"	3 04
	14.	"	2 10
	14.	"	6 32
	22.	"	22 75
	20.	"	7 77
	25.	Cash to M. S., by Junk & Huff	100 00
	22.	F'g't	5 25
	27.	"	15 00
	29.	F'g't	55 09
	29.	"	90 69
Nov.	1.	To M. S. Tom Bates' d'ft	70 00
	1.	" pension "	24 00
Oct.	30.	F'g't	3 05
	30.	"	37 63
	30.	"	73 40
Nov.	6.	Cash, M. S. Chase, d'ft	50 00
	8.	"	43 20
	6.	F'g't	14 30
	3.	"	23 50
	3.	"	8 15
	4.	"	6 30
	4.	"	13 90
	4.	"	10 95
	4.	"	5 80
	15.	"	1 65
	15.	"	24 20
	15.	"	8 20
	12.	"	60
	12.	"	12 15
	10.	"	2 95
	11.	"	2 95
	17.	"	17 85
	19.	D'ft to M. S. C.	490 00
	20.	F'g't	1 30
	18.	"	13 00
	22.	"	5 96
Sep.	1.	McKibben	13 00
Aug.	1.	W. N. Ayers Co	5 80
July	1.	Geo. Tilles	13 58
Oct.	25.	W. T. Bourne	18 12
Sep.	29.	N. Goldsmith, 40 bls. salt	87 60
Sept.	1.	Rent for Sept	40 00
Aug.	1.	Sengel & Schulte	6 90
Sept.	1.	John Gardner	32 00
Aug.	20.	W. N. Ayers & Co	6 90
Sept.	1.	S. Bollinger	20 46
Nov.	1.	Hamilton & Sparks	47 25
July	17.	W. I. Bourne	17 17
Oct.	10.	"	8 73
Aug.	1.	Hamilton & Sparks	5 75
Oct.	1.	W. N. Ayers [&] Co	6 90
Aug.	1.	D. A. McKibben	10 43
Nov.	1.	Theurer & Co	1 95
Oct.	4.	Ott Myer "	15 00
Nov.	1.	Park & Sparks	31 42
Oct.	1.	Sam'l McLoud	4 70
Sep.	1.	John Gardner	12 25
Aug.	1.	Rent for Aug	40 00
Oct.	1.	" Oct	40 00
Nov.	1.	" Nov	40 00
Oct.	1.	Wm. Breen	1 80
	1.	T. F. Moore	80
Aug.	1.	J. Scherman	1 25
Oct.	1.	B. F. Atkinson	9 75
Sept.	1.	Sengel & Schulte	13 80
Oct.	31.	T. F. Moore	5 70
Dec.	2.	D'ft to Hamilton B. Co	100 00
	2.	F'g't	5 56
	2.	"	29 25
	4.	"	46 45
	4.	"	7 72

	31.	L. Lyon & Son	425 25
	13.	Fleischer Bros	2,199 97
	27.	B. Loewenstein	113 83

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1879.			
Oct.	25.	Rice, Stix & Co	772 56
	25.	" 105,201,29	36 55
	13.	L. & A. Mickel	165 87
	24.	A. Spiro	85 85
Nov.	5.	Hanauer, Cohn & Co	211 50
Oct.	11.	"	1,412 13
Nov.	5.	A. Spiro	125 75
Oct.	17.	J. M. Anderson & Co	312 55
	25.	Chase & Cabot	15 94
Nov.	14.	J. Garnear & Co	92 93
Oct.	23.	Rice, Stix & Co	304 70
Nov.	10.	"	260 00
	10.	"	217 76
	1.	J. H. Plant	77 70
Oct.	8.	J. M. Anderson & Co	40 46
	9.	Chase & Cabot	100 10
	24.	J. M. Wiener	932 96
	31.	Schoolfield & Co	276 57
	27.	J. M. Anderson & Co	132 88
	24.	Chase & Cabot	822 62
	11.	Rice, Stix & Co	25 50
	27.	"	260 00
	27.	"	76 44
	25.	"	65 00
	30.	"	72 19
Nov.	27.	"	394 26
	29.	M. Lipstadt Bro	119 00
	29.	W. H. Haggerty	20 00
	29.	K. Wallace, Son & Co	66 00
	29.	A. Spiro	165 00
	29.	"	141 75
Dec.	4.	Schoolfield & Co	103 73
Nov.	25.	O. J. Lewis & Co	86 93

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1879.			
Nov.	25.	J. M. Anderson & Co	454 83
Dec.	1.	S. Schwab "	225 90
Nov.	27.	Rice, Stix & Co	206 38
	28.	"	88 95
Dec.	4.	Hamilton B. & Co	602 50
Nov.	26.	Eckerly Bros. Co	193 30
Dec.	13.	"	186 17
	6.	Chase & C. 114,453.85	110 56
Nov.	28.	"	117 05
	28.	"	158 09
Dec.	31.	G. A. Clark & Bro	275 00
1880.			
Jan.	3.	A. J. Lewis Co	80 70
'79.			
Dec.	27.	Rice, Stix & Co	458 21
	27.	"	9 53
	27.	J. Garnear "	86 80
	15.	J. Anderson Co	294 13
	16.	Selz, Schwab "	64 85
	31.	Flohr Hyness [&] Co	228 36
	26.	Rice, Stix "	153 41
	30.	"	75 37
	30.	"	20 57
'80.			
Jan'y	6.	O. J. Lewis & Co	53 30
	7.	Chase & Cabot	13 20
	7.	"	65 23
	6.	Rice, Stix & Co	177 67
	10.	"	20 00
	10.	"	154 67
	10.	St. Louis Soap Co	67 50
'79.			
Nov.	26.	Fleischer Bros	31 50
'80.			
Jan'y	9.	Lyons & Davis	168 60
	10.	Chase & Cabot	227 63
	10.	"	41 83
	6.	Rice, Stix & Co	143 47
	6.	D'ft, M. S. Rice, Stix Co	25 00
	8.	" Chase & Cabot	655 49
	6.	F'g't	9 80
Dec.	6.	F'g't	2 67
Nov.	21.	"	118 40
Dec.	12.	D'ft to M. S. C	500 00
	8.	F'g't	2 25
	9.	"	14 30
	9.	"	8 55
	9.	"	5 00
	15.	D'ft to M. S. of N. G	256 28
	16.	"	125 37
	13.	F'g't	5 80
	16.	"	6 53
	24.	Cash to M. S. C	1,500 00
	29.	D'ft "	600 00
	19.	F'g't	6 78
	22.	D'ft to M. S. (N. G.)	17 00
	30.	"	475 00
1880.			
Jan.	2.	F'g't	14 67
	2.	"	5 80
	5.	D'ft to M. S., N. G	500 00
	3.	F'g't	19 30
	6.	"	32 65
	6.	"	2 41
	8.	D'ft to M. S. by I. Spitzen	300 00
	6.	F'g't	14 02
	3.	"	14 30
	7.	"	46 60
	7.	"	10 10
	7.	"	12 90
	7.	"	24 62
	12.	"	6 92
	13.	"	5 52
	13.	"	3 78
	13.	"	3 84
1880.			
Jan'y	13.	Case thread	5 91
	13.	F'g't bill	3 23
	13.	"	1 83
	15.	D'ft of Tatum, M. S	88 68
	17.	" Sternberg to A. I. Co.	100 00
	17.	" Ass't U. S. Treas	42 00
	17.	" M. S. of N. G	500 00
	19.	F'g't	10 80
	14.	"	11 92
	21.	"	20 00
	14.	Buckner	16 80
	1.	J. Sherman	8 25
	1.	D. A. McKibben	4 93
'79.			
Dec.	29.	B. Berman	22 78
'80.			
Jan'y	1.	Park. & Sp'ks	81 68
	2.	Bocq. & Reutzel	35 63
	2.	Sengel & Schulte	42 29
	1.	Sam. Bollinger	7 50
	31.	N. G. d'ft to M. S	400 00
	30.	F'g't	13 05
	30.	"	5 80
	30.	"	26 58
	30.	"	36 40
Feb'y	5.	D'ft to M. S	500 00
	9.	"	200 00
	7.	" Ch. & Cabot	50 00
	9.	F'g't	17 62
	10.	"	10 67
Jan'y	27.	"	13 10
	28.	"	5 55
	28.	"	1 50
	28.	"	11 64
	28.	"	9 69

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1880.

Jan'y	7.	O. J. Lewis & Co	198 65
	7.	Miller & Worley	86 02
	2.	Chase & Cabot	262 67
	2.	"	236 00
	3.	J. M. Anderson	570 18
	2.	Rice, Stix & Co	198 52
	2.	"	188 78
	2.	"	387 09
	2.	O. J. Lewis & Co	299 30
	2.	Rice, Stix & Co	40 85
	3.	Chase & Cabot	161 14
	14.	M. Stern & Co	391 03
	21.	J. M. Anderson Co	67 50
	20.	O. J. Lewis [&] Co. (120,761.85)	33 50
	15.	M. Stern [&] Co	286 54
	23.	Chase & Cabot	101 11
	21.	Miller & Worley	59 62
	20.	Hamilton B. & Co	201 50
	23.	J. M. Anderson	151 09
	24.	"	387 89
	15.	Rice, Stix [&] Co	121 24
	15.	"	335 38
	24.	"	295 64
	24.	Chase & Cabot	155 92
	24.	J. H. Plant	244 45
	24.	Meyerberg & Co	226 10
Feb'y	10.	Anderson & Co	103 45
	11.	Fleischer Bro	1,106 00
Jan'y	28.	E. Schwerin Co	883 50
	2.	Chase & Cabot	103 46
	2.	"	185 37
	5.	"	43 05
Feb'y	15.	Jeans pants, M. S. C.	623 00

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1880.

Feb'y	13.	Hamilton Brown	120 25
	13.	Chase & Cabott	374 22
	9.		
	12.	Jas. Baum	123 70
	13.	Rice, Stix	104 11
Jan'y	30.	A. Levy Bros	625 25
	'79.		
Dec.	20.	M. Rosenfield	126 94
	'80.		
Feb'y	13.	Hannar, Cohn & Co	624 90
	11.	Chase & Cabot	92 50
	19.	Brookmyer & Rankin	244 10
	21.	Hamilton Brown	88 75
	5.	Chase & Cabot	162 56
	5.	"	72 09
	26.	Kramer, Loth & Co	131 90
	5.	O. J. Lewis & Co	38 85
	25.	Selz Schwab & Co	355 50
M'ch	9.	Chase & Cabot	120 75
	9.	"	110 68
	24.	Selz Scwab	336 60
	19.	Clark Bros	258 50
	13.	Chase & C. (130,519)	50 50
	13.	"	1,177 59
	27.	Eckerly Bros	38 30
	16.	Hanauer, Kohn Co	395 25
	9.	Friedman Bro	832 85
	17.	"	367 63
	1.	E. C. Meachem Co	86 55
	1.	A. Frank & Son	133 45
	2.	Rice, Stix Co	94 50
	3.	Brookmyer & Rankin	238 72
	3.	J. M. Anderson	108 74
	2.	Sam. Cupples	50 10
	2.	Rice, Stix & Co	337 85
	'79.		
Dec.	4.	W. T. Bourne	21 53
	19.	T. F. Moore	5 00
	1.	S. McLoud	20 78
Nov.	1.	Vogel & Wallace	8 20
Dec.	1.	Rent for Dec.	40 00
	1.	T. F. Moore	7 90
	'80.		
Jan'y	1.	New Era	9 60
	23.	T. F. Moore	2 70
	27.	"	1 90
	5.	W. T. Bourne	87 00
	1.	McKibben	10 00
	6.	Bourne	10 60
	'79.		
Dec.	30.	H'y Kuper	1 25
	'80.		
Jan.	1.	Pappenheimer	3 50
	1.	John Harrington	40 26
	'79.		
Sept.	5.	F't S. elevator	27 00
	'80.		
Jan'y	2.	Rent for Jan'y	40 00
	31.	T. F. Moore	12 70
Feb'y	14.	F'g't	30 48
	16.	"	24 16
	23.	D'ft of Junk & Huff, M. S.	200 00
	23.	F'g't	18 81
	25.	D'ft to M. S., of Goldsmith	500 00
M'ch	1.	" "	500 00
Feb'y	28.	" " B. & R.	500 00
	24.	F'g't	21 54
	24.	"	2 57
M'ch	4.	"	3 85
	5.	"	7 70
	6.	"	11 70
	10.	U. S. d'ft to M. S.	51 09
	10.	"	117 45
	11.	D'ft of B. & Rentzel to M. S.	150 00
	1880.		
M'ch	10.	D'ft of B. & R., M. S. C.	150 00
	8.	F'g't	20 66
	13.	D'ft, B. & R., M. S. C.	250 00
	13.	"	350 00
	10.	F'g't	20 26
	15.	"	10 14
	17.	"	7 60
	18.	"	38 89
	16.	"	51 31
	15.	"	7 59
	19.	"	17 00
	20.	"	2 20
	22.	"	30 64
	29.	D'ft, N. G. & Co., M. S. C.	500 00
	29.	2 d'fts U. S., 24.00, 24.00, M.S.C	48 00
Ap'l	1.	D'ft of B. & R., M. S. C.	300 00
	2.	Pension d'ft to M. S. C	54 00
M'ch	29.	F'g't	24 45
	30.	" thread	6 31
	31.	"	20 64
Ap'l	1.	"	21 68
	6.	D'ft B. & R., M. S	500 00
	6.	" N. G. & Co., M. S	500 00
	5.	F'g't	3 25
	8.	D'ft B. & R., M. S.	500 00
	6.	F g't	7 00
	9.	D'ft B. & R., M. S.	262 65
	8.	F'g't	127 50
	10.	"	4 61
	16.	D'ft N. Goldsmith, M. S. C.	1,000 00
Feb'y	3.	McLoud	17 11
M'ch	1.	N. Goldsmith & Co	16 20
	'79.		
Nov.	1.	S. Bollinger	9 75

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M'ch	5.	Rice, Stix & Co	177 06
	5.	Chase & Cabot	367 03
	15.	Rice, Stix & Co	213 78
	15.	"	242 56
Ap'l	1.	McLoud & J	7 66
Feb'y	1.	Rent, Feb'y	40 00
M'ch	1.	" M'ch	40 00
Ap'l	1.	" Ap l	40 00

	4.	Schwab & Co	179 50
	8.	Flusher Bro	81 00
	17.	Rice, Stix & Co	47 50
	17.	"	84 40
	2.	Lewis & Co	206 10
	12.	Chase & Cabot	337 21
	12.	"	103 72
	26.	S. Schwab	120 20
	16.	Chase & Cabot	158 86
	27.	Schoolfield & Co	408 98
	25.	Anderson "	349 01
Ap'l	1.	O. J. Lewis "	276 35
M'c	10.	Schoolfield "	865 30
	10.	Ed. Berch, wagons	175 00
Feb'y	9.	Chase & Cabot	75 02
Ap'l	26.	K. Wallock, Sons & Co	380 50
	17.	Hanauer, Cohn "	354 00
	28.	Levy, Bro. "	117 00
	23.	Schwab & Co	135 00
	30.	Chase & Cabot	455 25
	30.	Rice, Stix & Co	88 10
	26.	"	278 92
	2.	" 140,692.92	34 93
	27.	J. Mayberg & Co	309 20
	21.	C. E. Werner	6 10
	27.	Chase & Cabot	116 17
	26.	"	134 39
	26.	"	42 43
	10.	"	45 73
	16.	H'y Nathan	4 25
	16.	Bocq. & Rentzel	26 00
	1.	Hamilton & Sp'ks	17 50
Mar.	1.	McKibben	6 50
Feb'y	1.	S. McLoud	29 59
Ap'l	1.	J. Smith, P	4 48
	1.	Boas & Freer	4 55
	1.	P. R. Davis	3 75
M'ch	30.	Bocq. & Rentzel	40 75
	1.	Boas & Freer	18 55
Feb'y	1.	J. Clifford	1 00
	23.	John Gardner	4 00
M'ch	1.	D. McKibben	8 50
Feb'y	1.	J. K. Freer	5 25
Mc'h	1.	W. N. Ayers Co	6 50
Jan.	22.	W. T. Bourne	20 60
M'ch	12.	"	18 88
Ap'l	16.	Bocq & R	3 25
	17.	F'g't	20 19
	17.	"	39 96
	20.	"	213 05
	23.	D'ft N. G., M. S.	500 00
	22.	F'g't	3 04
	28.	"	12 14
	30.	"	21 73
May.	3.	D'ft N. G., M. S.	500 00
	1.	F'g't	9 85
	1.	D'ft N. G., M. S.	500 00
Ap'l	20.	F'g't	10 47

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Ap'l	10.	Chase & Cabot	225 58
	13.	Lewis & Co	113 75
	24.	Anderson & Co	191 47
	12.	J. Baum "	107 90
	9.	S. Schwab & Co	225 90
	10.	Anderson "	144 27
	10.	J. Mayberg & Co	430 84
	10.	Rice, Stix "	574 71
	10.	"	241 24
	10.	"	61 50
	10.	"	231 34
	28.	Brookmyer & Rankin	294 72
	17.	Hamilton, Brown Co	200 90
May	19.	O. J. Lewis Co	2 50
	7.	Schwab & Co	508 00
	14.	Myerberg & Co	180 57
	14.	Simmons H'ware Co.	12 20
	17.	S. Cupples & Co	13 23
	4.	A. Spiro	252 00
	1.	K. Wallack	151 25
	17.	Friedman Bros	192 90
	14.	Schwab & "	26 00
	14.	S. Cupples Co	21 25
	6.	Chase & Cabot	35 35
	6.	"	43 74
	6.	Rice, Stix & Co	37 20
	6.	"	674 65
	7.	"	57 45
	4.	B. Loewenstein	291 31
	4.	"	185 99
	7.	Brookmyer & Co	326 20
	5.	Chase & Cabot	57 32
	8.	M. Rosenfield	202 13
	19.	Eckerly Bros	200 41
			147,865 61
May	4.	F'g't	12 53
	6.	"	3 50
	7.	"	9 60
	8.	"	23 16
	10.	"	6 33
	13.	D'ft G., M S. C.	500 00
	12.	F'g't	58 47
	15.	D'ft G., M. S. C.	500 00
	15.	F'g't	23 00
	18.	"	26 25
	19.	"	9 05
	22.	D'ft N. G. & Co., M. S. C.	500 00
	24.	" "	500 00
	21.	F'g't	4 96
	22.	"	3 00
	24.	"	11 93
	26.	D'ft L. Miller to Cohn	48 45
	25.	F'g't	1 85
June	3.	D'ft N. G. to M. S. C.	500 00
	1.	F'g't	1 50
	5.	D'ft N. G. to M. S. C.	500 00
	10.	" "	500 00
	5.	F'g't	24 55
	9.	"	45 78
	11.	D'ft J. Spitzer to M. S. C	141 56
	12.	F'g't	1 10
	16.	D'ft N. G. to M. S. C.	500 00
	15.	F'g't	11 65
	16.	"	14 63
May	1.	Small, 1.00, 1.00, 50, 20	2 70
	1.	M. H. Sandels	40 00
June	1.	J. Clifford	2 80
	3.	Sengel & Sch	4 00
Mar.	19.	Taxes to Sh'f Falcona	198 37

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May	18.	Schwab & Co	437 50
	7.	Frankenthal & Bro	8 25
	18.	I. Meyberg & Co	4 00
	27.	"	12 63
	7.	Brookmeyer & R	187 72
	13.	Block, Draw & Co.	79 53
	15.	Schoolfield & Co	386 42
June	5.	Rice, Stix & Co	390 79
	5.	"	27 24
	5.	Hamilton, B., & Co	157 30
	10.	Friedman Bros	175 00
	3.	Rice, Stix & Co	7 50
	3.	"	159 84
	3.	"	159 84
	2.	Schoolfield, H., Co	328 05
	1.	Schwab & Co	854 50
June	1.	W. N. Ayers	10 35
	1.	McKibben	27 96
Ap'l	23.	Elevator office	7 00
May	26.	Bourne	35 80
June	1.	Rent for June	40 00
May	1.	Atkinson, T., Bro	25 31
Ap'l	20.	W. T. Bourne	40 26
May	1.	Rent for May	40 00
	1.	Bocquin & R	73 78
	1.	W. N. Ayers	6 50
	1.	McLoud & J	15 15
	1.	Chs. Bracht	11 00
	1.	Hamilton & S	2 25
	1.	E. A. Paden	34 62
	1.	Seng-l & Sch	39 53
Ap'l	30.	A. Wilkins Bacon	83 25

8.	O. J. Lewis & Co.	52 35	June 17.	N. O. Times	1 00
5.	Friedman Bros.	212 30	24.	D'ft N. G. Co. M. S.	500 00
10.	Rice, Stix & Co.	122 71	24.	D'ft Junk & Huff	150 00
7.	Friedman Bros.	45 35	21.	F'g't bill	25 85
11.	J. M. Anderson & Co.	385 93	24.	"	1 20
			22.	"	7 54
			29.	D'ft N. Goldsmith M. S	500 00
			25.	F'g't	3 23
			29.	"	17 88
			July 5.	D'ft N. G. M. S. C	326 20
			3.	F'g't	2 95
			6-7.	" 2.55, 5.80	8 55

126 & 127 FORM No. 1.

Petition by Debtor.

To the honorable judge of the district court of the United States for the eastern district of Arkansas:

The petition of Isaac Cohn, of the town of Pine Bluff, in the county of Jefferson and State of Arkansas and district aforesaid, respectfully represents that a petition has been filed in said court for the adjudication of himself as a bankrupt; that the schedule hereto annexed, marked "A," and verified by your petitioner's oath, contains a full and true statement of all his debts and (as far as it is possible to ascertain) the names and places of residence of his creditors, and such further statements concerning said debts as are required by the provisions of said act; that the schedule of said act hereto annexed, marked " B," and verified by your petitioner's oath, contains an accurate inventory of all his estate, both real and personal, assignable under the provisions of said act.

Wherefore your petitioner prays that he may be decreed to have a certificate of discharge from all his debts provable under the same.

ISAAC COHN, *Petitioner.*

UNITED STATES OF AMERICA, *Eastern District of Miesouri,* } *ss:*

Petitioner's Oath.

I, Isaac Cohn, petioner mentioned and descriped in the
128 foregoing petition, do hereby make solemn oath that the statements contained therein are true, according to the best of — knowledge, information, and belief, and I do further make oath that I am a citizen of the United States of America, and that I will bear true faith and allegiance to the same.

ISAAC COHN, *Petitioner.*

Subscribed and sworn to before me, this 20th day of April, A. D. 1877.

[SEAL.] HANNIBAL LOWRY,
Commissioner U. S. Circuit Court, Eastern District of Missouri.

Debtor states further that on the 8th or 9th day of October, 1876, his stock of merchandise, valued at $28,000, was totally destroyed by fire, and that his books and papers were also destroyed.

ISAAC COHN.

129 SCHEDULE "A 1."

Name of creditors.	Residence.	Amount.	When and where contracted.	Nature and consideration of debt.
Collection, State and county Taxes.	Pine Bluff, Arkansas.	Unknown.	Pine Bluff, 1876.	Taxes on business of debtor for year 1876.

ISAAC COHN.

130 SCHEDULE "A 2."—*Creditors Holding Securities.*

Names of creditors.	Residence.	Discription and consideration.	When and where contracted.	Value of securities.	Amount of debt.
Smart, Hudson and Co.	Pine Bluff, Arkansas.	Money loaned debtors. Mortgages, 5 or 6 in number, were assigned to creditors as security for the debt. Name of mortgages not known.	Pine Bluff, June or July, 1876.	Mortgages were executed to secure $1,600. Exact value unknown.	$1,200.00

ISAAC COHN, *Bankrupt.*

131 SCHEDULE "A" 3.—*Unsecured Creditors.*

Name of Creditors.	Residence and Occupation.	Am't.	When and where contracted.	Nature and condition of debt.
M. M. Dodd	Pine Bluff, merchant	650 00	Pine Bluff, 1874	Claim for rent in suit.
Smart, Hudson Co.	" bankers	3,010 00	" 1876	Money loaned—Notes given.
Mark S. Cohn	Newport, Ark., m'ch't		" "	" " Open account.
S. Buset	Alma, " "	325 00	" "	" " "

ISAAC COHN, *Debtor.*

SCHEDULE "A" 3.—*Unsecured Creditors.*

Names of Creditors.	Residence & Occupation.	Amount.	When and where Contracted.	Nature and Consideration of Debts.
Loewenstein Bros.	Memphis. Merchants.	3,000 00	Memphis, 1876.	Merchandise furnished, 2 notes given.
Schwab and Co.	" "	2,300 00	" "	" " 1 "
Isaac Friedman	" "	500 00	" "	" " open account.
Loewenstein Bros.	" "	45 00	" "	" " "
Menkan Bros.	" "	45 00	" "	" " "
Herzog Bros.	" "	70 00	" "	" " "
Schoofield, Hamer Co.	" "	400 00	" "	" " "
Harris and Hacht	Louisville, K't'y. "	700 00	Louisville, Ky., "	" " "
A. Lapp and Co.	" "	600 00	" "	" " "
Henly & Bretzfelden	" "	135 00	" "	" " "
N. Heymann	" "	330 00	" "	" " "
Freiberg and Levi	Cincinnati, O. "	470 00	Cincinnati, "	" " "
Bowey and Moore	Boston, Mass. "	1,200 00	Boston, Mass., "	" " "
Lehman, Abraham Co.	New Orleans. "	3,000 00	New Orleans, "	" " 3 notes given on %.
John I. Adams & Co.	" "	700 00	" "	" " 1 " "
Meyer Bros.	St. Louis, Mo. "	1,800 00	St. Louis, Mo., "	" " 1 " "
S. Landecker	" "	275 90	" "	" " open account,
A. Samuels	" "	400 00	" "	" " "
Jacob Strauss Co.	" "	475 00	" "	" " "
Missouri Glass Co.	" "	175 00	" "	" " "
Friedman Bros.	Memphis. "	1,800 00	Memphis, "	" " "
	Total	18,420 00		

ISAAC COHN, *Debtor.*

133 *Oath to Schedule "A."*

UNITED STATES OF AMERICA, *Eastern District of Missouri:*

On this 20th day of April, A. D. 1877, before me personally came Isaac Cohn, the person mentioned in and who subscribed to the foregoing petition and schedule marked "A," respectively, and who, being by me first duly sworn, did declare the said schedule to be a statement of all his debts, etc., in accordance with the act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2d, 1867, and the acts amendatory thereof.

HANNIBAL LOWRY,
Comm'r U. S. Circuit Court East. Dist. of Missouri.

134 *Schedule "B."*

Particular description of all real estate owned by petitioner or held by him, and whether under contract or lease.

None.

ISAAC COHN, *Petitioner.*

135 *Schedule "B 2."*

Cash on hand	None.
Bills of exchange, &c.	None.
Mortgages executed by R. C. Moore, John Oswald Collins, these have been collected by debtor and proceeds used for his expense	$750

ISAAC COHN.

136 *Schedule B 3.*

Choses in action.

W. Chambers, Wild Cat Landing, Arks.	$100 00
Jacobus and Rogolinger, unknown	800 00
Levy, California	76 00

Debtor cannot now give names of other persons indebted to him.

ISAAC COHN.

137 *Schedule B 5.*

Property claimed to be exempted.

Wearing apparel of self	$100

ISAAC COHN.

138 *Schedule B 6.*

Books, papers, &c. Ledger, day-book, journal.

Mortgages turned over to Smart, Hudson & Co. to secure indebtedness to them. Mortgages from R. C. Moore, John Oswald & Collins.

ISAAC COHN.

139 *Oath to "B."*

UNITED STATES OF AMERICA, } ss:
Eastern District of Missouri, }

On this 20th day of April, A. D. 1877, before me personally came Isaac Cohn, the person mentioned in and who subscribed the foregoing petition and schedule marked respectively "B," and who, being by me first duly sworn, did declare said schedule to be a statement of all his estate, both real and personal, in accordance with the act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2d, 1867, and the acts amendatory thereof.

HANNIBAL LOWRY,
Commissioner U. S. Dist. Circuit Court, East. Dist. of Missouri.

140 *Isaac Cohn's Petition of Bankrupt for Discharge.*

In the matter of Isaac Cohn in bankruptcy, &c.

To the Hon. Henry C. Caldwell, judge of the dist. court of the United States for the eastern dist. of Arkansas:

The petition of Isaac Cohn, of Pine Bluff, in the county of Jefferson, said dist., respectfully represents that on the 20th day of April, A. D. 1877, he was, on the petition of his creditors, duly declared and adjudged bankrupt, under the act of Congress — "An act to establish a uniform system of bankruptcy throughout the United States," approved M'ch 2d, 1867; that he has duly surrendered all of his property and rights of property, and has fully complied with and obeyed all the orders and directions of the court touching his bankruptcy aforesaid, and that he is ready to submit to any other and further examinations, orders, and directions which the court may require; that no assets have come to the hands of the assignor in bankruptcy, and that ¼th in number and ⅓ in value of his creditors consent to his discharge; wherefore your petitioner prays that he may be decreed by this honorable court to have a full discharge from all his debts provable under said bankrupt act, and that a
141 certificate thereof may be granted to him in accordance with the same.

(Signed) ISAAC COHN.

Oath and Acknowledgement.

I, Isaac Cohn, the petitioner above named, do hereby make oath that the statements contained in the foregoing petition subscribed by me are true, so far as the same are stated of my own knowledge, and that those matters which are stated therein on information and belief are true to the best of my knowledge and information and belief.

(Signed) ISAAC COHN.

Subscribed and sworn to before me this 25th day of June, A. D. 1877.

(Signed) STEPHEN WHEELER,
U. S. Comm'r West. Dist. Arks.

Agreement by Att's on Both Sides that Petition for Discharge Herein Named May be Read as Evidence in this Action.

We do hereby agree that copies of these three instruments, being petitions for discharge and entrance of appearance to bankruptcy proceedings, may be read as evidence in an action now pending in the dist. court of the United States for the western dist. of
142 Arks., wherein Frederick Kramer, assignee, is plaintiff, and M. S. Cohn and Isaac Cohn are defendants.

COHN AND COHN, *For Pl'f.*
CLENDENING AND SANDELS,
For D'f'ts.

In the Circuit Court of the U. S. for the Eastern Dist. of Arks.

In the Matter of ISAAC COHN, against whom a Petition of Adjudication of Bankruptcy has been filed.

I enter my appearance in the above matter with the same effect as if duly served, with the order to show cause herein, and hereby consent to an adjudication in bankruptcy.

(Signed) ISAAC COHN.

UNITED STATES OF AMERICA, *Eastern Dist. of Missouri,* } *ss:*

On this 20th day of April, 1877, personally appeared before me, the undersigned, a United States commissioner of the dist. aforesaid, and as such duly acting in the city of St. Louis, within the said eastern district of Missouri, Isaac Cohn, to me well known to be the same person whose name is subscribed to the foregoing waiver of service, &c., and acknowledged the same to be his act and deed for the purpose therein mentioned.

In witness whereof I have hereunto set my hand and seal of office, on the day and year last above written.

HANNIBAL LOWRY,
U. S. Com'r, East. Dist. of Missouri.

143 *Isaac Cohn's Petition of Bankrupt for Discharge.*

The petition of Isaac Cohn, of Pine Bluff, in the county of Jefferson, respectfully represents that on the 20th day of April, 1877, he was, on the petition of his creditors, duly declared a bankrupt under the act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2d, 1867. That he has duly surrendered all his property and rights of property and has fully complied with and obeyed all the orders and directions of the court touching his bankruptcy aforesaid, and that he is ready to submit to any other and further examination, orders, and directions which the court may require.

That no assets have come to the hands of the assignee in bankruptcy, and that $\frac{1}{4}$th in number and $\frac{1}{3}$ in value of his creditors consent to his discharge.

Wherefore, your petitioner prays that he may be decreed by this honorable court to have a full discharge from all his debts and liabilities provable under said bankrupt act, and that a certificate thereof may be granted to him in accordance with the same.

(Signed) ISAAC COHN.

144 *Oath.*

UNITED STATES OF AMERICA, *Eastern District of Arkansas.* } ss:

I, Isaac Cohn, the petitioner above named, do hereby make oath that the statements contained in the foregoing petition subscribed by me are true, so far as the same are stated of my own knowledge, and that those matters which are stated therein on information and belief are true, according to the best of my knowledge, information, and belief.

(Signed) ISAAC COHN.

Subscribed and sworn to before me, this 25th day of June, A. D. 1877.

(Signed) STEPHEN WHEELER,
U. S. Comm'r West Dist. Ark.

Certified Oath.

I, Ralph L. Gooderich, clerk of the dist. court of the United States for the eastern dist. of Ark., do hereby certify that the foregoing is a true copy of the original petition on file in the above-entitled matter.

In testimony whereof I have caused the seal of this court to be hereunto affixed, at the city of Little Rock, in the eastern district of Arkansas, this 30th day of June, in the year of our Lord 1877, and of the Independence of the United States the 101.

(Signed) RALPH L. GOODERICH, *Clerk.*

145 *Deposition of B. Washer.*

B. WASHER, being introduced on part of plaintiff and first duly sworn, deposes and says:

My name is B. Washer; aged thirty-nine years; occupation, merchant.

I lived in Pine Bluff, Arkansas, from the spring of 1873 to the spring of 1878.

During my residence there I was acquainted with Isaac Cohn and M. S. Cohn.

In 1873, after I came to Pine Bluff, I bought some goods from Isaac Cohn, but was not connected with either of the Cohns in business.

I did business in my own name.

I was in Pine Bluff on the 9th of October, 1876, when a large fire occurred in said town.

At the time I was doing business on one corner and Isaac Cohn on the opposite corner.

The fire occurred on the same block that Cohn was on and some two or three doors away from Cohn.

Cohn and myself were the only ones that went into and carried out goods from his store. We continued carrying out his goods into the yard until the upper story commenced falling in on us.

We then quit, and Cohn went over and assisted me in try-
146 ing to save goods from my own store. The goods that we saved from Cohn's store were taken to my house and remained there until I got my store repaired, which was about two weeks, when they were taken into my store. From my store Cohn sent them down to Watson station.

They were sent in my name.

Watson station is in Desha county.

They were sent to a man by the name of Boshwitz. The goods of Cohn were kept separate from mine while in my store.

The tickets were taken off, but as we bought from different parties I could easily tell. I do not know what became of the goods after they went into Boshwitz' hands.

I offered Cohn six hundred dollars for the goods, but he thought that there were thousand dollars' worth of them.

I don't think that the goods were worth any more than he asked for them, for I could buy them in the regular way for that money.

My brother was the last man to go into Cohn's store, and seeing the books lying there he shoved them into a trunk and brought them out. I saw the books after the fire. I refer to Isaac Cohn's account books and the books used by him in his business. Isaac Cohn, having no use for the books, burned them.

Before burning the books Cohn drew off accounts against sundry debtors of his, upon which collections were made afterwards.
147 Cohn turned over the accounts to me, and I not knowing the parties he pointed them out to me and I collected the money of them.

I think that I collected thus twenty-two hundred dollars. I could not say whether Cohn collected any money that was not turned over to me, but I think that he collected some small accounts; he went into the country several times to make collections. When he collected, I think that he paid over to me.

The whole amount collected by both of us amounted to about $2,200.

I had this money in my possession some four or five weeks. I sent somewhere from a thousand to thirteen hundred dollars of this money to New York to a cousin of Cohn's; his name I have forgotten. The balance I turned over to Cohn. Cohn was not doing any business at that time. I do not know of any other assets than those I have mentioned, belonging to Cohn, that were saved from the fire.

Since the institution of this suit I have received several letters from Isaac Cohn. The letter now shown me I received from Isaac Cohn, and is dated Fort Smith, Jan. 9, '80. It is in his, Isaac Cohn's, handwriting.

I make the same a part of this my deposition, and mark the same Exhibit "A."

I also received from him a letter of the date Jan. 30th, '80,
148 and in his own handwriting. I make the same an exhibit to my deposition and mark the same "Exhibit B."

In this Exhibit or letter B, Isaac Cohn says that I paid $400, for wages and loaned money. I never had him hired, owed him no wages, did not owe him for goods, nor loaned money, and did not pay him $400.

I think that I got another letter from him about 4th of November, 1879, just a day or so before I burned out in Helena. That letter was lost or misslaid in the confusion, and I do not know where it is, and cannot produce it.

The contents of that letter was that they were doing well in Fort Smith; that they had made about thirty thousand dollars; and that I might be assured that he was not working for wages.

Isaac Cohen did not in this letter, or at any other time, give me to understand what his interest was in the business.

I have never seen him personally since he went to Ft. Smith. I have no other communication from him than those above mentioned.

I know nothing about his bankruptcy I had no communication with him about it.

149 Cross-examination of B. WASHER:

The collections of accounts that I spoke of were made soon after the fire—say two or three or four weeks. I shipped all the goods that were saved from the fire to Watson station, to Boschwitz.

The letter that I spoke of yesterday as having been received from Isaac Cohn in November, 1879, I read but once. I have looked for that letter, but could not find it. In that letter he said that M. S. Cohn had made about "thirty thousand dollars since we have been here."

He made the remark in the letter that he was not working for wages, but for "above wages."

I did not read the letter myself, not being able to read English, but it was read to me by my daughter.

Isaac Cohn did not save his clothing at the fire. He lost his watch and chain in the fire also.

I do not know of Mr. Cohn doing any business in Pine Bluff after the fire. I do not know what became of the money that I turned over to Isaac Cohn. Many of the accounts were attached and garnisheed and were never collected by me, but were probably collected by the parties attaching.

150 Redirect examination by pl'ff:

My daughter read the letter, and I understood her reading. It was my daughter Lena. She is in the habit of reading all the letters to me that I receive, especially those in English. I have never up to this time known her to read a letter to me wrong. I rely upon her solely to read to me my correspondence and to answer the same.

When I said that I shipped all the goods to Watson, I meant all the goods that were saved from the fire and that were stored with me.

Since 1874 Mr. Cohn and myself were on friendly terms; before that we had some little differences.

(For Exhibit A and B to this deposition refer to pages 149 to 151.)

B. WASHER.

Deposition of M. A. Cohn, Att'y.

M. A. COHN, being duly sworn, deposes and says:

My name is M. A. Cohn; residence, Little Rock, Arkansas; age, fifty-six years; occupation, attorney-at-law; I am of the firm of Cohn & Cohn, attorneys-at-law, in the city of Little Rock.

151 Some time in the spring of 1879 we were spoken to the first time respecting the Isaac Cohn bankruptcy matter. We began inquiries which were rather unsatisfactory at first, but late in April or the beginning of May of said year we began to get a clew to what we thought was a fraudulent bankruptcy of Isaac Cohn.

We communicated with many creditors of Isaac Cohn respecting this case, but could find out nothing from them; they, one and all, claiming to know nothing positive to sustain any action against the defendants.

About the middle of June of the same year M's'r- Lehman, Abraham and Co., of New Orleans, and, somewhat later, Mess. Schwab and Co. — Meyer Bros., of St. Louis, & Freiberg & Levy, of Cincinnati, upon our representations that we were of the opinion that Isaac Cohn's fraudulent bankruptcy could be proven, they placed their claims in our hands, and we took immediate steps to secure the rights of our clients by instituting the suits now pending against M. S. Cohn and Isaac Cohn.

(Cross-examination waived.)

M. A. COHN.

There not being time to complete the taking of all the testimony desired herein, the further taking herein is adjourned until to-morrow, at 2½ o'clock p. m.

N. W. COX,
Notary Public.

152 *Deposition of Fred. Kramer, the Plaintiff in this Action.*

TUESDAY, *July 13th*, 1880, 2½ O'CLOCK P. M.

Pursuant to adjournment, the taking of depositions is herewith resumed.

FREDERICK KRAMER, being introduced upon the part of the plaintiffs and first duly sworn, deposes and says:

My name is Frederick Kramer; age, fifty years; residence, Little Rock, Ark.

Prior to my appointment as assignee of Isaac Cohn, in bankruptcy, I was not acquainted with either of the defendants farther than having just seen Isaac Cohn.

I am the plaintiff in this suit.

I knew nothing of Isaac Cohn's business, or of any other business of his, until after my appointment as assignee my attorneys, Cohn and Cohn, informed me that they had reason to believe that Isaac Cohn had acted fraudulently in his bankrupt matters, and asked my permission to take the proper steps to uncover such fraud, if any existed; whereupon I gave them permission to proceed in this bankrupt matter as seemed best to them as my attorneys. Since that time they have conducted the case as seemed best to them.

FREDERICK KRAMER.

153 EXHIBIT "A."

To the Deposition of B. Washer.

FORT SMITH, ARK., *Jan.* 9, '80.

Mr. B. Washer, Helena, Ark.

DEAR FRIEND: Some two months has nearly past since I wrote you a postal card and also a letter, asking you kindly to let me know who and what position the fire has brought you. Til- yet I had no answer, and cannot see why. I suppose by this [time] you think it does not differ to me that whoever in what condition you might have been placed in this would have been none of my business. Should this surely be the case I should surely be very sorry to bother you so much with my writing, but hoping some other cause has prevented you from answering my letter.

Some time by end of this month or commence- of next month parties from N. O. Lehman, Abraham and Co., and their attorneys, Cohn & Cohn, of Little Rock, have notified M. S. Cohn and myself that depositions will be taken in Helena in this case, and no doubt they will examine you, and therefore you remember well enough that those few goods which you shipped to Watson's station were goods you gave me on ac., and about everything else. Certainly you don't know this is only done by those rascals to bother M. S. Cohn all they can in order to make him all the expenses they can
154 and keep him out of the chance to sue them for damages on the closing-up question. As he has really a dead thing on them this might last as long as it may. Still his case and mine are two different things, as I have nothing to do with him, only get my pay for my work I am doing for him. This little fun will actually cost M. S. about $1,000 in cash. He has to take a lawyer from here and then go from here to Little Rock, Pine Bluff, Helena, Memphis, and St. Louis. I would have been very glad to have taken this trip myself, but under the circumstances that I am taking care of books and ac's and the entire management of business here is under my control. M. S. Cohn, who is East to buy stock, will start with the opposite party on this round trip —. I think some times about the 25th, — and will also call on you. Owing [to] the way things look I cannot get off before the month of June. Then I have

determined to take a month's recreation. Just think of the idea what people all will try to undertake to bulldoze matters in such a way. But one thing sure, those things have no go. Would be pleased, if suitable, to hear from you, and hope you & all your folks are doing well; and with my kindest regards to you and your wife and to Miss Lena.

From yours friend,

ISAAC COHN.

155 *Exhibit "B" to Washer's Deposition.*

FT. SMITH, ARK., *Jan.* 30, '80.

Mr. B. Washer, Helena, Ark.

DEAR FRIEND: In haste I drop you these few lines, as I have been really hard at work all this week. I had just now a letter from M. S. from P. Bluff, who is there now taking depositions. Everything is O. K. there, as they had to take back all those lies they have sworn to. On special*l* business M. S. is called back to St. Louis, therefore he will be unable to come to Helena, but believe that lawyer Cohn, from Little Rock, will be at your place to take depositions; therefore your folks, in case they should be called upon, don't know of anything; you remember well enough you never saw any goods saved from my store, &c., and you gave me about 400 doll's, which you owed me for loaned money and for wages, which goods you shipped to Watson's station; you certainly don't know of any money I sent anywhere, and you never sent any money for me, and you don't know of any books I saved, as my books burned up. These few lines I write to you in a hurry, as you have no idea what work I have to do. I am tied up in this business, and glad that, under
156 circumstances, I have to be so. I have no more to say. By this coming spring I am determined to make a trip, and, if pleasant to you all, I shall be pleased to call on you. This place so far has agreed with me, and I even gained on weight *on* 30 lbs. since I first came here.

Believe me I am more than satisfied; then you know well enough the circumstances I was left in.

Wishing you well, and hope to hear good news from you & your family, and accept my best regards to you and your wife & Miss Lena, and I hope in the next letter she will not altogether slight me, as she did the last, and be pleased to hear from you soon again.

Yours friend, ISAAC COHN.

157 *Deposition of M. S. Cohn.*

In the District Court of the United States for the Western District of Arkansas.

FREDERICK KRAMER, as Assignee, &c.,

vs.

ISAAC COHN and M. S. COHN.

Bill in equity.

WESTERN DISTRICT OF ARKANSAS, *County of Sebastian:*

I hereby certify that on the 23rd day of March, 1880, before me,

Robert Crawford, a commissioner, at my office No. 509 Olive street, in the city of St. Louis and State of Missouri, personally appeared before me, pursuant to the notice hereto annexed, between the hours of 9 o'clock a. m. and 4 p. m., the witness named M. M. Cohn, Esq., and appeared as counsel for complainant, and I. H. Clendening, Esq., appeared as counsel for defendants; and the said M. S. Cohn, being by me first duly cautioned and sworn to testify the whole truth, and being carefully examined, deposed and said as appears by the deposition hereto annexed.

M. S. COHN, a witness called on behalf of complainant
158 herein, and residing at the city of St. Louis, more than one hundred miles from the place where this cause is to be tried, being duly cautioned and sworn to tell the whole truth, and being carefully examined, deposes and says, on direct examination, as follows:

State your age, residence, and occupation.

I am thirty-one years old; live in the city of St. Louis, and am a merchant.

How long have you resided at St. Louis?

I moved here in spring of 1876, in commencement of month of March.

Where did you reside before you came to St. Louis?

I resided at Newport, Ark's.

How long have you been in the United States?

I came to the United States in spring of 1870.

Where did you reside from time you arrived in the United States to the time you lived in Newport?

I lived in Memphis until 1872, thence went to Pine Bluff, thence to Jones' Landing, Arkansas, and in spring of 1875 went to
159 Europe, and came back in fall of 1875, and went to Newport.

What was your occupation in those several places, except in St. Louis?

In Memphis I was peddling for several months and then commenced clerking, and continued to do so until [the] spring of 1872, and became a partner of Isaac Cohn; thence went to Pine Bluff and did business there with Isaac Cohn.

I was with Isaac Cohn until in fall of 1872, when we disagreed and dissolved.

I went then and opened business for myself in Pine Bluff; my brother was with me and he was peddling at the time.

In 1873, in fall, I went and opened at Jones' Landing, Arkansas.

I also farmed; rented land and made a crop.

There I sold out in spring of 1875, and started in business at Newport.

What capital did you have when you came over from Europe in 1870?

I came to New York with twenty dollars.

160 What was the amount of capital you had at Pine Bluff?

Eight hundred and seventy-five dollars, and it was invested in a stock of goods.

Was it the same stock of goods that was moved by you and Isaac Cohn from Memphis?

Yes, sir.

What was the name of the firm in Memphis just before you moved to Pine Bluff?

Isaac Cohn. I was a silent partner.

How do you *de*rive at the fact you had $875?

I put in $875.

When did you put that in?

About 2 months before we went to Pine Bluff.

State the value of the stock moved to Pine Bluff.

It was from $3,000 to $3,500.

What was the condition of the firm financially at the time of the removal to Pine Bluff?

161 The firm was in a good condition; in a fair condition.

What do you mean by fair condition?

That Isaac Cohn could buy all the goods that was needed for the business.

Was the firm's indebtedness large or small at the time?

Cannot rem-ber what proportion indebtedness bore to capital stock.

Had your capital increased any at the time of removal to Pine Bluff?

I do not think anything was made; business was dull, and this was one of the reasons we removed to Pine Bluff.

State whether partnership continued at Pine Bluff, and if so, under some name?

It continued under some name.

Why did the firm's name only mention Isaac Cohn?

At the time I went into partnership with Isaac Cohn, he
162 promised me that he would give me my name in the business in fall of 1872; he refused to do so.

On that ground we dissolved partnership.

He gave me no special reasons therefore.

He was the principal manager of the business.

Isaac Cohen was nine or ten months older than me, and was an an older citizen of America four or five years, and could speak the language of the country better.

Had he agreed to mention your name in the firm at the time you requested him?

He did agree at Memphis.

State time you dissolved at Pine Bluff.

It was 4th or 5th of November, 1872.

What was amount of capital that came to your share on dissolution?

I got out out of the business $1,000 in merchandize, a wagon and one mule, valued at one hundred and twenty-five dollars, and
163 two notes, each at one hundred dollars, signed by Isaac Cohn; in all $1,325.00.

Were those notes ever paid?

They were. I traded them off for goods. I suppose they were

paid. With the wagon and mule my brother went peddling, and continued peddling until I opened at Jones' Landing, using wagon and mule.

What kind of business did the firm of Isaac Cohn do while you were in it at Pine Bluff?

It did a very good business.

How long did you continue business at Pine Bluff on your own account?

From November, 1872, until about December 28th, 1873.

Did your capital increase at Pine Bluff?

Yes, sir; considerably.

What kind of business was done at Pine Bluff in 1873?

I had done a pretty fair business.

Is it not a fact that in 1873 and in succeeding years *that* at
164 Pine Bluff as well as other places business was not good and houses were failing?

I can say that some failed and some made money. People who attented to their business and lived within their means made money.

Did your brother add his earnings to the business you carried on at Pine Bluff?

What was the name of your business?

Mark Cohn, my brother's name, was not mentioned in the firm's name.

What was your capital at time of removal to Jones' Landing?

It was from $2,500 to $3,000. None of it belonged to my brother; he got wages.

Did you go into business at once at Jones' Landing?

I rented a store about 3 weeks at Jones' Landing before I gave up at Pine Bluff, and in that same store was about $400 worth of goods, which I bought on sixty and ninety days and four months' time.

165 Jones' Landing is fifty miles from Pine Bluff and is in Lincoln county, Arkansas.

Jones' Landing had only one store, but large plantations surrounded it.

Why did you leave Pine Bluff?

I found out Jones' Landing was a better business point. I did not leave Pine Bluff because business was slack; I thought at first to hold on to both places, but was afraid, from want of experience, as I had not been long in America.

Did your brother continue with you at Jones' Landing?

He continued to peddle for me a short time. He invested some of his earnings in my business. His name was Isaac Cohn. The Isaac Cohn who is defendant is a second cousin of mine and my brother.

What did your brother do after he ceased to peddle?

He worked with me in the store as clerk, and remained with me as clerk until I sold out.

Did he continue to give you his earnings?

166 Yes; all, except what he spent in the meanwhile.

Where is your brother now?

He is in Newport, working for me. He is about thirty-four years old.

What amount did you realize from the — at Jones' Landing?

About twelve to fifteen hundred dollars.

What did you have besides the above when you sold out at Jones' Landing?

I had beside that about $5,000 worth.

It was part cash, balance in cotton; most of it was in cotton. I had some produce, all of which was in Schoefield and Hanover's hands, at Memphis, Tennes-ee, as also some money of mine.

How much did you owe at — time you sold out at Jones' Landing?

I do not think I owed anybody a cent. I owed my brother nothing.

When did you pay back to him the proceeds you received from him?

167 I paid him gradually all I owed him before I sold out at Jones' Landing.

Did your brother remain with you until you sold out at Jones' Landing?

He did.

Did he come to America before you?

He did; he spoke the language not as well as I did when I sold out at Jones' Landing.

What led your brother to withdraw his earnings at Jones' Landing?

He loaned it out on interest. I do not know how much he had.

Did your brother converse with you as to his financial condition and his projects and prospects?

I do not recollect that he ever did.

Did you negotiate very long before the sale at Jones' Landing, or was it made on short notice?

I made up my mind long before that to sell whenever I got a certain amount of money; I did not sell with any sacrifice—that is, at any particular sacrifice.

I wish to know whether he was of a class of purchasers

168 who buy when no previous negotiations have been pending or made?

Purchasser who bought there was arround there several months.

He was peddling around there, and was occasionally at my store.

When was the first deffinite proposition made to you by him to buy that stock before you sold to him?

I told him a couple of trips that he made peddling before I did sell that I would give him a chance.

He made no definite proposition to buy until the time I sold him.

We bargained a day or two before the sales was made.

At time of sale, what did you owe your brother?

I owed him some money, but do not recollect how much. It was a small amount.

When did you stop investing his earnings in your business?

After I had money enough to run my own business.

How long was this before the sale at Jones' Landing?

169 It was in fall preceeding the sale.

Was he not in — habit of taking out money or drawing against his earnings, leaving balances to his credit, up to the time of sale at Jones' Landing?

Sometime- there were balances to his credit and sometimes not.

What did your brother have when he began to clerk for you?

He had nothing. He is an unmarried man.

What business did he carry on while you were gone to Europe?

He went with me to Europe and returned with me.

Can you state what capital he had when he went to Europe and when he returned?

He had about enough to do him to go and come back. If he had anything more, I do not know of it.

Has he any interest in business at Newport?

No, sir.

What is — size of — business at Newport?

170 I have stock — from six to seven thousand dollars.

How much did your brother have when he went to Europe?

He had paper to — five hundred dollars, to my best impression.

Did — business at Newport carry as large a stock at start as at present?

It did about the same.

When you went to Europe how much money did you have?

I had about six thousand dollars. When I came back I brought $3,500, and about $900 was sent to me some fall from Europe, and in February, 1876, about $700 was sent me.

These amounts I had left in Europe.

Why did you leave those amounts in Europe?

I had it out on interest and I could not collect it before it became due.

Did your brother ever fail in business?

He was never in business.

How much is now owing on Newport stock?

171 I will examine my books and see.

By consent of parties the further examination of witness is continued, and adjournment had until to-morrow, March 24th, 1880, at 9 o'clock a. m.

On this 24th day of M'ch, 1880, at 9 o'clock a. m., Mess. Cohn and Clendening, the said attorneys, and the said M. S. Cohn, the witness, meet at my office and examination is resumed. As part of answer to last question, witness answers:

The amount owed was about 700 dollars (seven hundred) and I have drawn out above four thousand five hundred dollars ($4,500) in cash, which I put into the Fort Smith store.

What is the amount of bills receivable and outstanding claims of Newport store?

Hardly any, as I do not do a credit business.

When did you draw out the $4,500?

All along since I opened; that is, after I had been in business a year and had made some money.

Did you keep a memorandum of amount drawn out?

172 I did; I kept it in books at Newport and here. The Newport books will show up the amount I drew out. The memorandum here is not complete, as I have not the duplicate bills.

What do you mean when you say I have not the duplicate bills here?

By carrying goods in different houses here and elsewhere sometimes I get a duplicate bill, and sometimes not.

Was there any special reason why you did not get duplicate bills?

My merchants sometimes neglected to send them to me.

Did you not usually demand a duplicate bill here when you paid for goods yourself at the time?

Most times I did.

What store do you refer to when you speak of Fort Smith store?

I mean my own store at Fort Smith.

What is the firm's name used in carrying on business at Fort Smith?

173 The firm's name is M. S. Cohn.

When was that business established?

In June, 1877.

Were you at Fort Smith when it was established?

At the time it was established I was here buying goods; a few weeks afterwards I went there and stayed several days.

Who opened the Fort Smith business, or was in charge?

Isaac Cohn managed the business for me, with a young man named Dan Harrington.

You mean your brother Isaac Cohn or your cousin?

My second cousin Isaac Cohn.

Where was your cousin Isaac Cohn before business was established at Ft. Smith?

He was doing business at Pine Bluff at time I went to Europe in 1875.

What became of that business?

As far as I know and heard he was burned out and everything was destroyed.

174 When and where did you meet him after returning from Europe?

In St. Louis in spring of 1877, about March.

What did Isaac Cohn do between time he was burned out and when you met him in 1877?

I do not know; had no correspondence nor talk with him.

It was in commencement or middle of March; I do not remember the day I met him.

What was said at that time about establishment of business at Fort Smith?

He never spoke then about any business at all, as we were not on good terms.

How long did Isaac Cohn remain in St. Louis at that time?

Until I send him to Fort Smith in June, latter part June, 1877.

Did he between time you first sent him to Fort Smith take benefit of bankrupt act?

I do not know.

Did he never speak to you about his bankruptcy?

I cannot recollect if he did.

Did you not know that he was a bankrupt?

175 Yes, sir.

When did you first learn that he was a bankrupt?

I cannot state; I do not remember that I knew he was a bankrupt when he went to Fort Smith.

When did he get his discharge?

I cannot tell, and cannot tell I ever knew he got his discharge or not.

I first learned he got his discharge last fall, 1879.

Have you a family?

Yes; a wife and three children; was married 15th of August, 1875, in Europe.

How often have you been to Fort Smith since the business was opened there?

Have been there every six months regularly, and sometimes between those periods.

Has Isaac Cohn been in charge down there since its establishment?

Yes, sir.

How often has stock been taken down there?

Whenever I went there, every six months, I overlooked books and stocks.

176 How large a stock was there last time you were there?

About $24,000; the indebtedness then I cannot tell, but I know how much now.

The indebtedness then was larger than now?

The outstanding claims then were about $20,000. Now I think about $12,000.

Are there any books kept down at Ft. Smith?

Yes, sir.

Who kept those books?

Isaac Cohn keeps them.

Is the Fort Smith business the principal business carried on by you?

It is the largest and best paying business I have.

How many clerks are employed in Fort Smith business?

Now I have three and a porter; at opening I had two, named Dan Harrington and Isaac Cohn.

How large a rent for building is paid at Fort Smith?

Forty dollars per month, from commencement til- July, 1880.

What are your family expenses p'r year, besides, or say including your own?

177 In 1867, I had as expenses $900; in 1877, about $1,100; in 1878, about $1,300; in 1879, about $1,500. I mean by a year the time beginning in spring of each year.

Do you own the Newport storehouse?

I do not, but rented [it] at $25.00 per month. I have one clerk and one who gets certain percentage.

To the one who gets wages I pay $50 p'r month.

How long has the Newport business had those two clerks?

I had one since the opening; the other, the manager, who works for percentage, I had since 1877, and his name is Sam Brash and his percentage is forty p'r cent. of profits after expenses are paid.

The clerk's name, who receives $50, is Isaac Cohn, my brother; Sam Brash, began in August, 1877.

Did you carry on business at other places than Newport and Fort Smith after return- from Europe?

I did have a business at Alma, Arkansas, before I opened Ft. Smith business. I took part of Alma goods to Ft. Smith and another part to Newport. I took smaller part to Fort Smith,
178 larger to Newport. I took to Fort Smith about $700 in general merchandise, and to Newport about $1,200 in general merchandise.

At Alma Sam Brash had charge of the business, and at opening of business my brother, Isaac Cohn, was there, and remained there until I moved to St. Louis.

When was Alma business established?

About July, 1876.

Who was at Newport while Brash and your brother were at Alma?

I was there myself, with my clerk, named Ben Berger, and his wages were $40 or $50, and he remained four or five months.

I had another clerk, named Charles Less, who began in the summer of 1876 and left in spring, 1877, and he received $15.00 per month and board.

Brash was my brother-in-law; married my sister; he received forty per cent. net of profits at Alma business.

Did he have any interest in goods at Alma?

179 He did; he had $800 invested in them, which went with — into Newport business.

Whence come the goods which went into Alma store?

I bought all in St. Louis myself.

What did Isaac Cohn, at Fort Smith, receive for his services?

At start I made no bargain for wages. I opened for experiment to see how business would pay, and according to pay I would see what I would be able to pay him.

After several weeks I saw what he had done for me; I promised to give him $1,000 per year and everything free, seeing he was a good man to sell goods, doing the work of 3 men.

I mean he was a good salesman.

What do you mean by "everything free?"

I mean board, washing, and presents of suits of clothes.

I sent him the suits of clothes from St. Louis, or if he took from store he charged himself with them.

Does he share in profits of business?

No, sir; he draws his money whenever I go to Fort Smith, or at that time we have settlements.

180 Does he draw out his money?

Yes, sir; he draws money, and charges himself from time to time, and when I go up there we have settlements.

The account is kept at Fort Smith in books; I know that account is there kept, as I examined books personally.

Is there any stock book kept at Ft. Smith?

I do not keep one; in 1879 stock was taken regularly, and memorandum of it is in court at Ft. Smith; with this exception I have no memorandum of the stock accounts.

Do you keep a set of books at St. Louis of Ft. Smith business?

Yes, sir; I keep my Ft. Smith business separate from Newport business in my St. Louis books.

Who buys goods for Fort Smith?

I do; buy and pay for them, excepting small matters he may buy at Ft. Smith.

I keep business seperate, but I sometimes get bills of each place from moneys belonging to other place-.

Is there a complete set of books kept at Ft. Smith of all
181 transactions?

No, sir; at Fort Smith they keep invoices, accounts of goods sold, cash account, and wages paid, moneys sent me, and bills paid there.

Do you take duplicate receipts for all bills paid for?

I take the original, no duplicates.

Do you render a statement to each store for bills paid?

No, sir.

Have you the receipts here in the city?

I have.

Why is no account of moneys paid out kept in books in Newport and Ft. Smith?

They only attend to selling my goods and have nothing to do with my indebtedness, and it is not their business to know.

What does the settlement you make with Isaac Cohn consist of?

Settlement of his wages.

How much stock did Ft. Smith business carry in fall and winter of 1877?

182 About $8,000 — stock; some weeks more and some weeks less. In spring of 1878 stock was larger; in fall of 1878 it was still larger.

How large was indebtedness of Fort Smith business in fall of 1878?

I cannot recollect; I have data of Ft. Smith business from which I can determine indebtedness.

The indebtedness in fall of 1878, after looking at my books, I say was about $8,000.

What do the books show was due in Fort Smith business in fall of 1878—that is, what was due?

The books up there show; I do not know.

What stock did you have on hand in fall of 1878?

About $15,000.

Were you in Pine Bluff lately?

Yes, sir; I was there in January, 1880; I arrived there the same day with my attorney.

While at Pine Bluff did you have interviews with Henry Nathan?

I had several conversations with him, he being an old ac-
183 acquaintance.

Was he a witness for you at Pine Bluff?

He was.

How many interviews did you have with him before he was called as a witness?

I do not know that I had any.

Did he assist you to get any testimony?

He did not; I asked him, and he told me where certain persons could be found.

Complainant here closes his examination, and I. H. CLENDENING, Esq., begins the cross-examination, to which M. S. COHN answers as follows:

Do you remember I and you meeting Hy. Nathan at a store?

I do; we met the night we came to Pine Bluff, and I. H. Clendening had interviews with Henry Nathan.

State what witnesses were mentioned and the facts desired to be proved by them.

Mr. Clendening asked Nathan about the stock at time of fire, and
Nathan said there was a large stock, but that he could find
184 out more from Eugene Feiss, who was clerking with Isaac
Cohn. Nathan told us that L. Moore was there and saw where fire commenced.

State your mode of living from time you began at Pine Bluff until you sold and went to Europe.

I lived very economically; did my own cooking in store; slept in the store, and went hardly anywhere. I was trading in all kind of produce outside of my regular business.

Before you went to Jones' Landing, did you have any information as to whether it was a good business point?

I did from several parties, one of whom was R. Davis, who travels for Loewenstein Bros., who told me that if the right kind of a man would go there he could make nice money.

Did you engage in other business in 1874 besides keeping store?

Yes, sir; I rented about 20 acres of land from Major Doughlass, and with my labor and with some of other help, which was cheap
labor, made eighteen bales of cotton, which brought me 15¼c.
185 p'r pound.

Had your brother Isaac any money invested in your business at any time?

No, sir.

Explain what you meant when you spoke of his money being in your business.

During the cotton season I needed all the money I could get to buy cotton, and during that he did not draw out his wages, but left them in my hands.

When did you sell the cotton taken in season of 1874–75?

About March, 1875. The books of Schoolfield, Hananer and Co. will show exact date. The last lot sold for 15¼ cents, amounting to about seventy bales; the cotton cost me about ten cents p'r pound.

State if there were any special instances out of usual line of business in which you made money between time you began in 1872 and when you went to Europe.

In spring of 1873 I went to Memphis with about $1,500 in cash and bought a stock of goods at about $350, which stock was worth fully $1,000.

186 There was a fire on Bill St., and the goods I bought were slightly damaged, but not to hurt; for the trade I had the goods just suited me, my trade being with negroes.

In 1874, in fall of year, I got $500 for good-will of a saloon, and got full pay for whisky on hand; this was outside of my general store and was Jones' Landing.

What was your reason for selling out the business which was so profitable?

I had my mind made up to go to the old country and live there.

Why did you come back from the old county so soon?

On account of military services claimed by the Prussian Government.

Before leaving America I got my citizen papers and also a pass.

When I arrived at Berlin I went to the American consul and showed him my papers; he informed me that if I stayed they could take and put me into the regular army; and for this reason I returned to America.

187 What was the correct time of starting store at Jones' Landing?

It was about in September, 1873; about four months before I moved myself.

It was a mistake when I stated on direct examination that it was about four weeks.

What assets had you when you went to Europe?

About six thousand dollars in cash and about one thousand dollars in notes and papers.

How much did you put into business at Newport at the outset?

About $3,500.

If you examined your memorandum since yesterday, state when the money came back to you from Europe.

Yes, sir; in July, 1876, $950, and March, 1877, $840.72.

I brought in one New York draft over $3,000 and about $500 in cash.

Is there any company or firm name in Ft. Smith or is there anybody concerned in that business except yourself?

188 I have no company and nobody has any interest in my business at Ft. Smith.

How did you purchase stock with which business was commenced at Fort Smith?

Mostly at auction. I bought one stock of goods from a widow who wanted to give her business up for $735 and her stock amounted to over $2,000.

How do you manage to make it profitable to live in St. Louis away from business at Newport and Fort Smith?

A man always in market watching chances can always make two dollars here where he cannot make one at place of business in the country. I can buy at auction, constable, and sheriffs' sales and general auction sales.

Redirect examination of said "M. S. COHN:"

Where you in company with Mr. Nathan on the night preceeding the day on which you began to take depositions at Pine Bluff in this case?

Yes, sir; but not with him alone. Mr. Clendenning was
189 with me; also Portis and Hiskok.

On morning we took depositions were you with Nathan?

I was. Mr. Clendening was also with me at some time.

Did you have any private interviews with him alone, besides these above?

At the time *of* Sam'l Franklin's deposition was taken Mr. Nathan called me aside for a moment. I had no other private interview with him.

Did Brash have any other interest in Newport business save the 40% profit and the goods that come from Alma?

The goods that come from Alma were mine—not Brash's. That $800 is a loan, and he gets 40% of net profits.

Why was the business given up at Alma?

My sister was sickly there, and Brash could not attend to the business exactly right on account of the business—*i. e.*, the sickness.

Did you make any money out of the Alma business?

190 I made some money, but not to amount to anything, not over $1,000 profit.

When did you first speak to Isaac Cohn about the contemplated business at Fort Smith?

After I bought some goods at auction, and had them stored at M. Stern & Co., I was looking for a place of business; then Isaac Cohn came to me and said that he heard that I wanted to open another business; as he had nothing to do and wants to make a living, and that I knew he was a good salesman, if I would not engage him to work for me; I told him that I had *not* place yet, and I could not give him a decided answer. Through persuasions of friends I afterwards took him. That friend was Abraham Bejek.

Recross-Examination of M. S. Cohn.

Recross-examination resumed by Mr. CLENDENING:

Was the $4,500 profits from Newport business free of Brash's charge of 40%?

He received part of it—say about 20%.

In any of these conversations with Mr. Nathan which you
191 state you had or any you may have had while at Pine Bluff taking depositions, whether you referred to this case more

than to any other friend whom you supposed knew anything of the facts in this case?

I did not.

M. S. COHN.

Sworn and subscribed to before me, 24th March, 1880.

ROBERT CRAWFORD,
Commissioner.

The further examination by consent adjourned until March 25th, 1880, at 9 o'clock a. m.

192 Complainant having rested his case, *and* the defendants, to sustain the issue on their part, introduced the following deposition, transcript of record, and agreement:

193 *Deposition of M. Lipstandt for Defendant.*

Pursuant to adjournment, examination was resumed this 25th March, 1880.

M. LIPSTADT, a witness for the defendant, is duly sworn to speak the whole truth, and says:

I. H. CLENDENING proceeds to question him.

State your name, age, and residence.

I am a wholesale clothier; reside at St. Louis; age, 42 years.

Where did you reside in year 1877?

At St. Louis.

Are you acquainted with Isaac Cohn, who did business at Pine Bluff?

Yes, sir.

Did you see him in spring of 1877?

Yes, sir; he was here in spring of 1877, and prior to Jewish Easter, and left about June, 1877. He came to my room in 1877, and roomed continuously there until he left the city in June, 1877. He could not have been absent a day at a time without my knowing it, and I do not remember that he was absent from the city at
194 all during that time; I mean to say that I think he could not have been absent a day at a time without my knowing it.

Cross-examined by Mr. M. M. COHN for complainant, and says:

My recollection is clear that Isaac Cohn was here in spring of 1877. I do not say positively that Isaac Cohn was not absent for any length of time during period he was in St. Louis, but I do not think he was absent during that time; he might have left a half day or so, but my impression is that he was — continuously during that time.

I do not remember that I loaned Isaac Cohn any money during that period.

(Signed) M. LIPSTADT.

Sworn to and subscribed before me, this 25th day of March, 1880.

ROBERT CRAWFORD, *Commissioner.*

X-Examination of M. Lipstadt.

At this point of time said M. S. COHN is recalled by defendant, and examined by I. H. CLENDENING, Esq., and says, to wit:

I came from Newport to St. Louis with my family on 18th March 1877.

195 I came into M. Lipstadt's store and there I was told that Isaac Cohn was in the city. Two or three days afterwards he came to see me, and from that time I saw him every day or two until he left for Ft. Smith, between — 10th and 15th of June, 1877.

I came here in — spring of 1876 with my family and stay-d till in the fall.

I came from Newport, I mean, and went back there in — fall of 1876, and, as stated above, moved back here with my family on the 18th of March, 1877.

M. S. COHN.

Sworn to and subscribed before me March 25th, 1880.

ROBERT CRAWFORD,
Commissioner.

Commissioner's Certificate.

And I hereby certify that the said M. S. Cohn and M. Lipstadt were by me first duly sworn and cautioned to testify the whole truth, and being carefully examined deposed and said as above, and subscribed their names thereto.

And I further certify that the said depositions was then and there reduced to writing by me, and was, after it had been reduced to writing, subscribed by the witnesses, respectively.

196 And I further certify that the reason why the said deposition was taken was that *that* the said witnesses resided at St. Louis, Mo., more than one hundred miles from Fort Smith, Arkansas, the place where this cause is to be tried.

And I further certify that I am not of counsel nor attorney for either of the parties in said deposition and caption named, or in any way interested in the event of the said cause named in said caption, and I oppened the commission, by virtue whereof I took said deposition.

And I further certify that there is due M. S. Cohn, a witness, for two days' attendance, the sum of three dollars, $3.00, and there is due me, as commissioner, for taking said deposition, the sum of twenty-seven dollars, $27.00, and that the same is just and reasonable.

In testimony whereof I have hereunto set my hand and seal, this 25th day of March, in the year of our Lord one thousand eight hundred and eighty, at the city of St. Louis, State of Missouri.

ROBERT CRAWFORD, [SEAL.]
Commissioner.

And I further certify that it was agreed in my presence by the

attorneys for plaintiff and defendant that all exceptions as to relevancy and competency were reserved until the hearing of this cause.

ROBERT CRAWFORD, [SEAL.]
Commissioner.

197 *Deposition of Henry Nathan for Defendants.*

HENRY NATHAN, being duly sworn, deposes and says:

My name is Henry Nathan, of lawful age, by occupation ———, and a resident of the city of Pine Bluff, Arkansas.

Are you acquainted with the defendants in this case, Isaac Cohn and M. S. Cohn?

Yes.

How long have you known them?

I have known M. S. Cohn since 1872, and Isaac Cohn since 1869 or '70.

State whether or not M. S. Cohn was ever in bussiness in Pine Bluff; and, if he was, when was it?

M. S. Cohn opened bussiness here in a house belonging to Mr. Haycock on Baywagen St., in fall of 1872.

State, if you know him long, when he carried on business here.

He commenced in the fall of 1872 and 1873; he opened a branch store at *K* Smith or Jones' Landing, in Lincoln county, to which he ultimately moved his business from here to that place; he continued business at Jones' Landing until 1875, when he sold out to one Schramm. He came here then and stayed here a day or two, and then went to Europe.

198 Do you know of your own knowledge whether Isaac Cohn and M. S. Cohn were on good terms with each other from the fall of 1872 to 1875?

I know positively that they were on very bad terms, and only made friends through my and John Bloom's intercession on the ev'g of M. S. Cohn's leaving for Europe, which was in spring of 1875.

Where did you reside from the time he left up to 1st of November, 1876?

Here, in Pine Bluff.

State, if you know, whether or not M. S. Cohn was doing business here for himself, or for any one else, after the spring of 1875 and up to the 1st of November, 1876.

He never was here after he left here for good, and was not in business either for himself or any one else here.

Cross-examined by plaintiff:

Were you on intimate terms with the defendants, and regarded yourself as a friend of theirs?

Yes.

Were you familier with the business qualifications of Isaac Cohn?

Yes.

What were they?

He was a good salesman; could not be surpassed in this city.

199 When did Isaac Cohn get burned out?

In October, 1876, at the great fire in Pine Bluff.

Do you know how long after the fire Isaac Cohn went into bankruptcy?

No.

Do you know anything about any moneys that Isaac Cohn had after the fire, either here, in New York, or elsewhere, either prior to or subsequent to his bankruptcy?

No, not of my knowledge.

What do you mean by saying "Not of your own knowledge?"

I might have heard that Isaac Cohn had some money, but I am not aware of it myself.

Did you not tell H. H. Hunn, cashier of the Merchants' and Planters' Bank, some time after the fire at Pine Bluff, Ark's, that Isaac Cohn had $4,000 and over at New York, in connection with some debt that Isaac Cohn owed at the same bank; if so, how did you know it?

I most positively say that I never had any conversation with H. H. Hunn concerning Isaac Cohn having any money in New York, or anywhere else; but [I] remember H. H. Hunn told me that the bank had attached some goods of Cohn in the hands of Boschwitz down on the railroad.

You are an old business man yourself, are you?

Yes.

200 How long have you been living in Arkansas?

Since 1869—all the time at Pine Bluff, except one year at Hot Springs.

Are you familier with the commercial and financiel affairs among merchants in Arkansas during the years of 1873 to 1879?

I was conversant with — commercial condition of merchants in this county, and it was very unfavorable.

Were there many failures during that period?

They were quite numerous.

Was there not a general stagnation in business, not only in Arkansas, but throughout the United States, during that period?

Yes, according to the statistics.

What would have been the effect on Pine Bluff merchants had not the season of 1879 not been a good one?

My candid opineon is, that $\frac{7}{8}$ of the merchauts of Pine Bluff would have been bankrupted.

Are you familier with the country surrounding the city of Pine Bluff, the sources of her business? State the condition throughout, good or bad.

Pine Bluff is surrounded by, I think and believe, the best
201 bottem and upland country for raising cotton in the State of Arkansas.

What is the effect of a good season upon the business of the city of Pine Bluff?

The business of Pine Bluff is based upon a general credit system, and a good crop would naturally conduce to its benefit.

Is it not a fact that a good crop creates in Pine Bluff what is vulgarly called a boom?

Yes.

Redirect examination by defendants:

You said that the general business outlook in 1873 to 1879 was bad; do you remember distinctly as to the crops of 1874, 1875, and 1876?

Yes; as — I have been living in Arkansas there has never been a real failure in its product, cotton, in this immediate section, but the stagnation *was* in business, in my opineon, was only caused by the low prices in cotton.

What was the ruling price of cotton for the months of February, March, and April, 1875?

I don't remember.

Were not there men engaged in business in 1874, 1875, and 1876 who made money?

Yes.

202 You speak of the general course; do you refer to any particular firm or firms?

No; my answer was general.

Did you know or not know anything of the business of M. S. Cohn?

Yes; he brought goods and money on deposit with me; he has been prosperous, had money, and discounted his own bills every time.

Recross-examined by att'y for pl'ff:

What kind of business were you doing at Pine Bluff?

Wholesale liquer business; firm of "A. Nathan and Co."

Did you sell M. S. Cohn generally large or small bills of goods?

I sold him bills amounting to from $300 to $500.

How much of M. S. Cohn's money did you have?

He always had a balance on my hands of from $600 to $800, and at one time I gave him a check on Nathan Bros. for $1,300.

This was in 1873–'74.

And further this deponent sayeth not.

HENRY NATHAN.

203 *Deposition of Eugene Fies for Defendants.*

Being duly sworn deposes and says:

My name is Eugene Fies; aged, 21 years; by occupation a clerk, and a resident of the city of Pine Bluff, Arkansas.

Where were you and in what occupation were you engaged prior to the 11th day of October, 1876?

I was a clerk for Isaac Cohn, the defendant, in his store in Pine Bluff at the time he burned out.

What kind of a stock was in that store at the time of the fire as

regards quantity as compared with what there was 2 months before the fire?

At the time of the fire there was a large stock, and goods were coming in every day; at the time of the fire the stock was considerably larger than it was two months before the fire.

Cross-examined:

Did you continue with Isaac Cohn after the fire?

No.

State what was the condition of the stock as to quantity, amount, &c.

204 The goods were coming daily before the fire in large quantities.

And further this deponent sayeth not.

EUGENE FIES.

Deposition of Louis Moore.

LOUIS MOORE, a witness for defendants, being duly sworn, deposes and says:

My name is Louis Moore, of lawful age, of the city of Pine Bluff, Ark's, and by occupation a keeper of an eating-house.

I occupied the storehouse, owned by I. Sorrels, on the north side of Banagin St., next door to Isaac Cohn's store, in the corner of Banagin St. and German St.

This was on the 9th of October, 1876, and on that morning the fire originated; I discovered the fire in Portis alley, which was the second door from my place and the 3rd door west of Isaac Cohn's store. In that fire 3 whole blocks burned up.

I know Isaac Cohn, and it was at this fire that his store was burned.

And further this deponent sayeth not.

LOUIS MOORE.

(Jurat of commissioner.)

205 & 206 *Agreement of Counsel.*

We hereby agree that the following affidavits hereto filed in the U. S. dist. court for the western dist. of Ark. in the case of Kramer, assignee, *vs.* M. S. and Isaac Cohn, to wit:

Owen I. Lewis,
James D. Faulkner,
Isaac Stern,
Abraham Spiro,
Andrew Sproule,
J. Baum,
Michael Cohn,
Jos. C. Cabot,
Julius Rothschield,
August Frank,
Isidore M. Wiener,
B. Eisman,

May be read in evidence in said cause, subject to exception as to competency, relevancy, and that it is understood that the parties making said affidavits have not therein stated that they, of their own knowledge, know when M. S. Cohn got the money or produce referred to with which goods were paid for, and it is further agreed that it shall be taken as evidence that Abraham Bejack knows that Isaac Cohn was in St. Louis prior to April 4th, 1877.

COHN AND COHN, *For Plaintiff.*
CLENDENING AND SANDELS,
For D'f't.

207 *Affidavit of Abraham Spiro for Defendants.*

In the Dist. Court of the United States for the Western Dist. of Arkansas. In Chancery.

FRED. KRAMER, as Assignee of Isaac Cohn,
vs.
M. S. COHN and ISAAC COHN.

STATE OF MISSOURI, }
City of St. Louis, } *ss:*

ABRAHAM SPIRO, being duly sworn, upon his oath says:

My name is Abraham Spiro; my age, forty-two years; my residence, St. Louis, Missouri; my business is wholesale manufacturer and dealer in jeans clothing.

In May, 1873, I was in the same business at Memphis, Tenn.; I know M. S. Cohn; I have sold him goods for years, and continue to sell him.

I first sold him a bill of goods on May 26th, 1873. The first bills I sold him were under the name of Mark Cohn, and were shipped to him in that name to Jones' Landing and Pine Bluff, Arkansas.

Since 1875 I have sold him goods and shipped them to him in the name of M. S. Cohn at Newport and Fort Smith, Arkansas. I have sold and shipped him goods in the name of M. S. Cohn since the fall of 1875, when he went into business at Newport after
208 his return from Europe. He explained to me that there was another Mark Cohn in business at Newport, and that he put the "S" in his name to avoid confussion.

I have allways sold him solely upon his credit, and have always looked to him alone for payment.

I have never known Isaac Cohn or anybody else in any of my transactions with M. S. Cohn or Mark Cohn.

I know Isaac Cohn. I know that Mark and Isaac were not upon good terms for from some time in 1873 and before I sold Mark the first bill of goods until several years after.

About the time, or before the time, I first sold Mark goods Isaac came to me and spoke very harshly of Mark.

He said that he was a thief and that he would not pay for anything he bought.

M. S. Cohn went to Europe in the spring of 1875 and returned in

September of the same year, with his wife, whom he married in Germany while abroad.

His trunks and effects, when he returned from Europe, were sent to me from New York or Hoboken to Memphis, and I forwarded them to him at Newport.

ABRAHAM SPIRO.

(Jurat of notary public.)

209 *Affidavit of Andrew Sproule for Defendants.*

ANDREW SPROULE, *who*, being duly sworn, upon his oath says:

My name is Andrew Sproule; my age is — years; my residence, St. Louis, Mo.; my business, wholesale merchant. I am a member of the firm of Samuel C. Davis and Co., wholesale dealers in dry goods and notions, in the city of St. Louis, Mssouri.

I know M. S. Cohn; our firm sold him goods in October, 1875; the bill amounted to $1,189.36, and was sold on about ½ cash and the balance at 60 days' paid, which balance was paid at maturity.

The sale was made solely upon his own credit. We have never given him credit upon anybody else's account.

The goods were shipped to him at Newport, Ark.

We looked to him alone for payment.

ANDREW SPROULE.

(Jurat of notary public.)

210 *Affidavit of Joseph Baum for Defendants.*

JOSEPH BAUM, *who*, being duly sworn, upon his oath says:

My name is Joseph Baum and my age is forty-five years; my residence, St. Louis, Missouri, and my occupation wholesale merchant. I am a member of the firm of Joseph Baum and Co., wholesale dealers in boots and shoes, in the city of St. Louis, Missouri.

I know M. S. Cohn; our firm has sold him goods for several years past, the first bill being October 2d, 1875, $348.60. All of our sales to him have been solely upon his own credit.

We have never given him credit upon anybody else's account.

We have never known Isaac Cohn or anybody else in our transactions with him.

All the goods we have ever sold him have been shipped to him in the name of M. S. Cohn, either to Newport or Fort Smith, Arkansas, just as he directed.

In our dealings with Mark S. Cohn, from the date of our first bill to him, we have always found him prompt and reliable.

His bills have always been paid at maturity or before maturity.

J. BAUM.

(Jurat of notary public.)

211 *Affidavit of Michael L. Cohn for Defendants.*

MICHAEL L. COHN, *who*, being duly sworn, upon his oath says:

My name is Michael L. Cohn; my age is fifty-six years; my resi-

dence, St. Louis, Missouri. I am a member of the firm of Berman and Cohn, doing a wholesale business in wool, hides, and furs in the city of St. Louis, and was a member of that firm, doing the same business in the same place, during the year of 1875.

I know M. S. Cohn. In September, 1875, M. S. Cohn returned from Europe, and on the 12th of September, same year, he deposited with us for his account a draft on New York for $3,056.45, which draft was duly honored, and we honored his drafts to that amount, so they were presented from time to time. On July 24th, 1876, he deposited another draft on Europe for $950, and on March 15th, 1877, he deposited still another draft on Europe with us for $840.72, both of which drafts were duly honored.

These two last drafts were placed to his credit with us and he drew against them from time to time until the money was all gone. We have done business with him and frequently advanced him money. We always gave him credit solely upon his own account and looked to him alone for payment.

MICHAEL L. COHN.

(Jurat of notary public.)

212 *Affidavit of Joseph C. Cabot for Defendants.*

JOSEPH C. CABOT, *who*, being duly sworn, upon his oath says:

My name is Joseph C. Cabot; my age is fifty-three years; my residence, St. Louis, Missouri; my occupation, wholesale merchant. I am a member of the firm of Chase and Cabot, wholesale dealers in dry goods and notions, doing business in the said city of St. Louis. I know M. S. Cohn. My firm has sold him goods for several years past, the first sale being on September 25th, 1877, and the last being during the present month. We have given him a credit of $4,800 at one time during the present year.

All our sales to him have been solely upon his own credit.

We have never given him credit on anybody else's account.

We have never known Isaac Cohn or anybody else in our transactions with him. All the goods we have ever sold him have been shipped to M. S. Cohn, either at Newport or Fort Smith, Arkansas, just as he directed, We have shipped him goods both to Newport and to Fort Smith during the present month.

We have always looked and still look alone to M. S. Cohn for payment.

JOSEPH C. CABOT.

(Jurat of notary public.)

213 *Affidavit of Julius Rothschild for Defendants.*

JULIUS ROTHSCHILD, *who*, being duly sworn, upon his oath says:

My name is Julius Rothschild; my age is thirty-three years; my residence is St. Louis, Mo.; my business, wholesale merchant; I am a member of the firm of J. Meyberg & Co., doing business in said city of St. Louis, Mo.

Our business is wholesale dealers in hats, caps, furs, and straw goods.

I know M. S. Cohn; our firm has sold him goods for several years past, the first bill being September 11th, 1876.

All our sales to him have been solely upon his own credit.

We have never given him credit on anybody else'- account.

We have never known Isaac Cohn or anybody else in our transactions with him. All the goods we have ever sold him have been shipped to M. S. Cohn, either at Newport or at Ft. Smith, Ark's, or Alma, Ark's, just as he directed; we have always looked to him for payment.

JULIUS ROTHSCHIDD.

(Jurat of notary public.)

214 *Affidavit of August Frank for Defendants.*

AUGUST FRANK, *who*, being duly sworn, upon his oath says:

My name is August Frank; my age is thirty-three years; my residence, St. Louis, Mo.; my occupation, wholesale merchant. I am a member of the firm of "A Frank and Sons," wholesale dealers in dry goods and notions, in said city of St. Louis.

I know M. S. Cohn; our firm has sold him goods for several years past, the first bill being November 9th, 1875. All our sales to him have been solely upon his own credit. We have never given him credit on anybody else'- account.

We have never known Isaac Cohn or anybody else in our transactions with him. All the goods we have ever sold him have been shipped to M. S. Cohn either at Newport or at Fort Smith, Arkansas, just as he directed.

We have always looked to him alone for payment.

He owes us nothing now.

AUGUST FRANK.

(Jurat of notary public.)

215 *Affidavit of Isidore M. Wiener for Defendants.*

ISIDORE M. WIENER, *who*, being duly sworn, upon his oath says:

My name is Isidore M. Wiener; my age, thirty-nine years; my residence, St. Louis, Mo.; my occupation, commission merchant. I am a member of the firm of I. M. Wiener and Co., who do a commission business in the city of St. Louis, Mo.

I know M. S. Cohn; I have known him since 1875. My firm has done business with him since August, 1877.

We handle all his shipments of cotton in St. Louis. We have frequently advanced him money. All the advancements we have ever made him have been solely upon his own credit. We have looked to him alone for payment.

We do not know Isaac Cohn or any one else in connection with M. S. Cohn's business.

M. S. Cohn went to Europe in the spring of 1875 and returned in the fall of the same year. He was married while he was gone and

brought his wife back with him. He went to Newport, Ark's, to live and began business there shortly after his return from Europe. He remained there until — spring of 1877, when he removed to St. Louis, where he still resides.

ISIDORE M. WIENER.

(Jurat of notary public.)

216 *Affidavit of B. Eiseman, for Defendants.*

BENJAMIN EISEMAN, *who*, being duly sworn, upon his oath says: My name is Benjamin Eiseman; my age is forty-five years; my residence, St. Louis, Mo.; my occupation is wholesale merchant; I am a member of the firm of "Rice, Stix & Co."

The business of my firm is that of wholesale dealers in dry goods and notions, carried on in said city of St. Louis. I know M. S. Cohn; my firm has sold him goods this fall, and charged and shipped them to him under that name at Newport and Fort Smith, Arkansas.

We sold him solely upon his own credit, and look to him alone for payment.

We did not know Isaac Cohn or anybody else in our transactions with him.

B. EISEMAN.

(Jurat of notary public.)

217 *Affidavit of Isaac Stern, for Defendants.*

ISAAC STERN, *who*, being duly sworn, upon his oath says:

My name is Isaac Stern; my age is thirty-six years; my residence, the city of St. Louis, Mo.; my occupation, merchant.

I was a member of the firm of M. Stern & Co., auction and commission merchants, from the time that firm began business, sometime in 1875, and continued to be a member up to the time it suspended, in October, 1879.

I know M. S. Cohn, and my firm frequently sold him goods.

I identify the papers attached to this affidavit and marked A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, and V, and sealed with the seal of James P. Dawson, notary public, St. Louis county, Missouri.

They are bills of goods sold by my firm to M. S. Cohn, and shipped to him at Fort Smith, Arkansas.

These goods were sold to M. S. Cohn solely upon his own credit, and we looked solely to him for payment.

The goods were sold at the date of the respective bills, and were not shipped at once, but were allowed to accumulate in our house until such time as M. S. Cohn should select a place to go into business. A great many of these goods, if not all of them, were from broken stocks.

218 The largest portion of these bills were settled by notes. He gave us one note, May 25th, 1877, payable in 30 days, for $963.48, and another, dated June 26th, 1877, also payable in 30 days, for $501.30; both of these notes were made by Mark S. Cohn, without endorsement, and were paid at maturity.

He also frequently gave us drafts on his commission merchant, which were uniformly honored.

At that time I knew he had several country stores—one at Newport and one at Alma, Arkansas.

ISAAC STERN.

(Jurat of notary public.)

219 The following are the respective bills mentioned in affidavit of Isaac Stern:

Bill A.

M. Stern. I. Stern.

Positively no claims allowed after the goods have been delivered.

Office: 124 & 126 Church St., N. Y'k, 102 Pearl St., Boston, Mass.

ST. LOUIS, Mo., *April* 24, 1877.

Mr. M. S. Cohn bought of M. Stern and Co.,

Auction and Commission Merchants, No. 508 & 510 Locust St.

Terms cash.

5.	2	suits, 2.00	4 00
8.	3	coats and pants, 1.10	3 30
11.	9	shirts, 37½	3 38
13.	3	coats, 2.45	7 35
14.	1	coat and pants	1 20
61.	8	vests, 85	6 80
67.	2	coats, 75	1 50
76.	4	pants, 1.95	7 80
96.	6	" 40	2 40
99.	3	vests, 75	2 25
111.	5	suits, 3.30	16 50
137.	8	" 4.00	32 00
157.	4	coats, 2.40	9 60
			$98 08
78.	3	vests, 40	1 20
86.	3	" 50	3 00
			$102 28

220 *Bill "B."*

ST. LOUIS, Mo., *May* 1*st*, 1877.

Mr. M. S. Cohn bought of M. Stern and Co.

13,600.	1^{15}	7 hats, 35	2 60
132.	1^{15}	6 " 40	2 55
382.	1^{15}	12 " 70	8 55
385.	1^{15}	7 " 10	85
706.	1^{15}	7 " 12½	1 03
379.	1^{15}	7 " 7½	68

	1^{15} 4 fur caps, 12½	65
	1^{15} 3 beaver hats, 37½	1 28
	1^{15} 3 hats, 90	2 85
1.	168 suspenders, 5	8 40
9.	3 suits, 3.90	11 70
13.	6 " 2.30	13 80
21.	12 shirts, 35	4 20
43.	7 ass't coats, 3.10	21 70
55.	2^{20} 13 shirts, 40	5 35
560.	10 white suits, 2.10	21 00
	17,400 paper collars, 4.50	78 30
77.	6 coats and vests, 2.30	13 80
79.	9 coats, 1.15	10 35
		$209 64

221 *Bill "C."*

St. Louis, Mo., *May 3rd*, 1877.

Mr. M. S. Cohn, bought of M. Stern and Co.

55 D.	84 corsets, 17½	14 70
$\frac{3}{2}\frac{3}{5}\frac{8}{8}\frac{8}{9}\frac{}{7}$.	7 p'c's embr., 18 ea., 126	5 99
43 D.	10 " crash, 250, 4½	11 25
91.	1 lot vel. ribbon, 66 p's, 3½	2 31
120 A.	1 piece cass., 29, 18	5 22
136.	1 " red felt, 22¾, 37½	8 54
137.	1 " pink felt, 17½, 35	6 13
156.	1 " felt, 28, 30	8 40
B.	19 ass't hats, 65	12 35
C.	1^{15} 2 " 30	75
302.	6 pr. blankets, 75	4 50
		80 14
	1 case	1 00
		$81 14

Bill "D."

St. Louis, *May 4th*, 1877.

Mr. M. S. Cohn bought of M. Stern & Co.

12 p'r's gray blankets, 75	9 00

222 *Bill "E."*

St. Louis, Mo., *May 8th*, 1877.

Mr. M. S. Cohn bought of M. Stern and Co.

6.	6 vests, 85	5 10
27.	6 cass. coats, 1.30	7 80
38.	5 pants, 2.00	10 00
47.	6 suits, 2.75	16 50

49.	6 spring o'coats, 2.00	12 00
65.	31 linen " 20	6 20
74.	10 " " suits, 1.50	15 00
80.	9 coats, 1.15	10 35
95.	5 suits, 3.50	17 50
135.	5 " 4.00	20 00
189.	6 " 2.00	12 00
204.	5 " 2.80	14 00
217.	5 " 3.50	17 50
		$163 95

Bill "F."

ST. LOUIS, Mo., *May 9th*, 1877.

Mr. M. S. Cohn bought of M. Stern and Co.

34.	20.50, 24 child's A ties, 22½	5 90

223 & 224 *Bill "G."*

ST. LOUIS, Mo., *May 10th*, 1877.

M. S. Cohn bought of M. Stern and Co.

3.	1 C. 100, 36 hats, 90	33 40
6.	3 C. 45, 12 " 80	10 05
117.	72 " 45	32 40
10.	1 C. 100, 36, " 87½	32 50
		$108 35

Bill "H."

ST. LOUIS, Mo., *May 15th*, 1877.

M. S. Cohn bought of M. Stern and Co.

121.	8 pants, 80	6 40

Bill "I."

ST. LOUIS, Mo., *May 16th*, 1877.

M. S. Cohn bought of M. Stern and Co.

7.	1 C. 50, 60 men's kip brog's, 1.12½	68 00
13.	1 C. 50, 24 " b'f cong., 1.10	26 90
14 D.	12 " c'lf b'ts, 2.30	27 60
30 D.	1 C. 25, 12 ch'l. G. S. Pol., 50	6 25
39 D.	1 C. 25, 12 mog. slip., 80	9 85
52.	1 C. 25, 12 lad. s'q'r bal., 55	6 85
		$145 45

225 *Bill "J."*

ST. LOUIS, MO., *May 21st*, 187–.

M. S. Cohn bought of M. Stern and Co.

43.	2 C. 32, shirts, 45	5 70
52.	3 p'c's green basege, 45, 48¾	8 77
195.	1 lot lace, 32 p'c's, 78 d'z, 8¼	6 43
	(Duplicate.)	
		$20 90

Bill "K."

ST. LOUIS, MO., *May 22d*, 1877.

M. S. Cohn bought of M. Stern and Co.

36.	12 pants, 1.70	20 40
712.	4 suits, 3.00	12 00
88.	2 C. 30, 12 hats, 65	8 10
	3 C. 75, 36 wo's c'lf pal., 1.12½	41 25
	1 C. 50, 36 " " 92½	33 80
	(Duplicate.)	
		$115 55

Bill "L."

ST. LOUIS, MO., *June 25th*, 1877.

M. S. Cohn bought of M. Stern and Co.

5.	8 lbs. thread, 30	2 40
	(Zinsen on die neue note.) (Int. on new note.)	4 70
		$7 10

226 *Bill "M."*

ST. LOUIS, MO., *June 28th*, 1877.

M. S. Cohn bought of M. Stern and Co.

17.	3 gross buttons, 25	75
31.	36 suspenders, 15	5 40
57.	24 P. knives, 25½	6 12
168.	3 mufflers, 60	1 80
		14 07

Bill "N."

ST. LOUIS, MO., *June 29th*, 1877.

M. S. Cohn bought of M. Stern and Co.

45.	2 p'c's emb'y, 18, 22	3 96
53.	1 " 9, 22½	2 03
76.	1 " 13½, 22	2 97
99.	2 " 18, 18	3 24

23.	2 "	34, 14	4 76
29.	2 "	36, 11½	4 14
31.	2 "	18, 17½	3 15
36.	1 "	18, 15½	2 79
38.	2 "	18, 20	3 60
39.	2 "	18, 30	5 40
90.	2 "	17½, 15	2 63
92.	1 "	18, 14	2 52
129.	2 "	36, 12½	4 50
1526.	1 lot collar buttons		40
1528.	1 " "		30
108.	2 p'c's emb'y, 18, 20		3 60
			$49 99

227 *Bill "O."*

ST. LOUIS, MO., *July* 2*d*, 1877.

M. S. Cohn bought of M. Stern and Co.

32.	96 combs, 6½	6 24
106.	14 red flannel drawers, 1.10	15 40
106.	13 " " 1.15	14 95
		36 59

Bill "P."

ST. LOUIS, MO., *July* 5*th*, 1877.

M. S. Cohn bought of M. Stern and Co.

3.	12 hose, 19	2 28
35.	3 drawers, 35	1 05
63.	24 belts, 3½	84
17.	10 drawers, 60	6 00
		10 17

Bill "Q."

ST. LOUIS, MO., *July* 12*th*, 1877.

Mr. M. S. Cohn, F't Smith, bought of M. Stern and Co.

7.	1 lot buttons	4 00
10.	23 gloves, 17½	4 03
20.	10 drawers, 17½	1 75
41d.	120 hose, 5½	6 60
276.	5 U shirts, 1.20	6 00
252.	1 c. 15 | 4 shirts, 75	3 15
		25 53

228 *Bill "R."*

ST. LOUIS MO., *July 17th*, 1877.

M. S. Cohn, F't Smith, bought of M. Stern and Co.

79.	42 hats, 72½	30 45

Paid 7, '21.

M. STERN AND CO., *M.*

Bill "S."

ST. LOUIS MO., *June 18th*, 1877.

M. S. Cohn bought of M. Stern and Co.

42.	24 cal. shirts, 18	4 32
97.	48 betts., 4½	2 16
		6 48

(Duplicate.)

	1 chand	8 00
	Lamps in chand	2 30
	For desp	1 50
	Dray	2 00
	Stern, porter	1 00

Bill "T."

ST. LOUIS, MO., *June* 19, '77.

17.	12 coats and pants, 80	9 60
54.	3 c. 45, 18 hats, 50	9 45
55.	1 c. 15, 6 " 80	4 95
100.	2 c. 30, 12 " 80	9 90
		33 90
	By 2½c. on lot 54, 18 hats	45
		33 45

Bill "U."

ST. LOUIS, MO., *July 25th*, 1877.

Mr. M. S. Cohn, F't Smith, bought of M. Stern and Co.

2.	12 prs. ladies' kip polka, 90	10 80

Bill "V."

ST. LOUIS, MO., *July 30th*, '77.

Mr. M. S. Cohn bought of M. Stern & Co.

2.	11 parasols, 42½	4 68
4.	1 lot needles, 8 box	2 50

15.	30 child's hose, 4½	1	35
49.	1 lot neck lawn		30
89.	1 " delain, 244½ yds., 11½	28	12
	1 " drawers, 51, 21½	10	97
243.	1 " merino, 45¼, 24	10	86
		58	78

230 *Affidavit of Owen J. Lewis for Defendants.*

OWEN J. LEWIS, *who*, being duly sworn upon his oath, says:

My name is Owen J. Lewis; age, forty years; my residence is Boston, Mass.; I do business in St. Louis, Mo.: my occupation, a merchant; I am a member of the firm of " O. J. Lewis and Co.," and was at the date of the several bills attached hereto.

The business of my firm is auctioneers; I know M. S. Cohn, and my house has frequently sold him goods.

I identify the several papers attached to this affidavit, marked A, B, C, D, F, G, H, I, and J, and sealed with the seal of James P. Dawson, notary public, St. Louis county, Missouri.

They are bills of goods sold by my firm to M. S. Cohn, and shipped to him at Fort Smith, Arkansas, at or about the time of their respective dates.

These goods were sold to M. S. Cohn solely upon his own credit, and we looked to him alone for payment.

OWEN J. LEWIS.

(Jurat of notary public.)

231 The following are the bills referred to in the affidavit of Owen J. Lewis:

Bill "A."

ST. LOUIS, 4, 25, 1877.

Mr. Cohen bought of O. J. Lewis and Co., auctioneers, No. 417 N. 5th street.

165.	72.	1 p'ce jaconet, 20, 15½	3	10
54.	5502.	12 coats, 1.50	18	00
70.	5465.	9 O'coats, 2.10	18	90
83.	5139.	6 suits, 3.00	18	00
4930.	----	6 " 3.00	18	00
6917.	----	7 coats, 2.50	17	50
		6 suits, 3.00	18	00
			111	50

Bill "B."

ST. LOUIS, MO., 4, 26, 1877.

M. S. Cohn bought of O. J. Lewis and Co.

49.	25.	12 W'ds pal., 1.05	12	85
51.	50.	24 " lace, 1.00	24	50
66.	25.	12 " " 1.25	14	95

77.	25.	12	"	" 1.20	14 65
78.	25.	12	"	cong., .95	11 95
80.	25.	12	"	lace, 1.27½	15 55
					94 45

232 *Bill "C."*

ST. LOUIS, Mo., 4, 30, 1877.

M. S. Cohn bought of O. J. Lewis and Co.

1.	1 box collars	15
2.	½ bind'g	1 00
13.	19 brushes, 13	2 47
49.	18 jackets, 67½	12 15
54.	14 gloves, 26	3 64
59.	5 " 30,	1 50
60.	5 gaunt, 20	1 00
66.	7 pants, 32½	2 28
69.	10 shirts, 70	7 00
71.	37 vests, 65	24 05
72.	12 shirts, 27½	3 30
73.	8 pants, 65	5 20
83.	7 coats, 2 25	15 75
125.	1 lot buttons	1 00
142.	19 mitts, 50	9 50
144.	1 lot nets	1 10
		91 09

Bill "D."

ST. LOUIS, Mo., *May* 4, 1877.

Mr. Cohen bought of O. J. Lewis and Co.

17.	15.	11	shirts, 260, 47½	5 38
21.	"	12	" 250, 37½	4 65
				30
				10 33

233 *Bill "E."*

ST. LOUIS, *May* 2d, '77.

M. S. Cohen bought of O. J. Lewis and Co.

236.	168.	2 p'c's alpaca, 106¼ yds., 25	26 61
238.	31.	1 " " 53 " 40	21 20
580.	12.	9 scissors, 15	1 35
	6,473.	5 suits, 4.00	20 00
			69 16

Bill "F."

ST. LOUIS, *July 3rd*, 1877.

M. S. Cohen bought of O. J. Lewis and Co.

B.	25.	12 wool, 70	8 65
167.		30 M. slips, 42½	12 75
156.	25.	12 c. butt's, 45	5 65
	25.	12 " "	5 65
157½.		12 w. bush, 32½	4 15
			36 85

234

Bill " G."

ST. LOUIS, Mo., 7, 6, 1877.

Mr. M. S. Cohen bought of O. J. Lewis and Co.

182.		9 hose, 12	1 08
187.		42 " 15	6 30
193.		43 "	3 87
195.		58 "	6 38
196.		13 "	78
205–208.		35 ties, 8	2 80
211.		103 bows, 2	2 06
296.		43½ yds. d. goods, 8	3 48
325.		13–4 " cass., 10½	18
326.		80 yds. poplin, 9	7 20
332.		22 " d. g., 9	2 00
309.		53 " " 21	11 13
5.		4 shawls, 1.70	6 80
6.		5 coats, 1.00	5 00
9.		4 " 1.00	4 00
307.		4 " 20	80
308.		9 " 17½	1 58
310½.		12 " 15½	1 86
22.		12 " 37	4 44
20.		6 " 87½	5 25
31.		4 " 1.00	4 00
196.		3 pants, 2.05	6 15
338.		17 hose, 6	1 02
		Case and dray	1 00
			91 06
		Mistake	2 00
			$89 16

235 *Bill "H."*

St. Louis, Mo., *July 10th*, 1877.

Mr. Cohen bought of O. J. Lewis and Co.

D 12.			
36–50.	12 wom's' pol., 1.10		13 45
D 37–25.	12 " " 1.02½		12 55
38–25.	12 " cong., 95		11 65
41–25.	12 " lace, 85		10 45
D 44–25.	12 " " 90		11 05
46–25.	11 child's " 77½		8 77
47–25.	12 " pol., 50		6 25
48–25.	12 " " 45		5 65
51–25.	12 Wom's' Newp'ts, 1.00		12 25
64–75.	36 " lace, 1.02½		37 65
D 75	12 mens' ties, 1.70		20 40
42–25.	12 wo's' lace, 1.00		12 25
77–50.	12 mens' Alex., 1.55		19 10
79–50.	12 boys' " 1.30		16 10
80–50.	12 men's " 1.40		17 30
82–50.	12 " " 1.40		17 30
D 84½–50.	12 boots, 2.30		28 10
D 84½–50.	36 " 2.10		78 10
D 93–25.	12 wom's busks, 50		6 25
101–25.	12 child's butt's, 55		6 85
104–25.	12 " pol., 30		3 85
108½–50.	24 " auk., 20		5 30
62–50.	24 men's ties, 1.15		28 10
146–100.	48 " brog's, 1.00		49 00
	Drayage		50
			$438 22

236 *Bill "I."*

St. Louis, Mo., 7, 11, 1877.

M. S. Cohen bought of O. J. Lewis and Co.

31.	10 M. needles, 50		5 00
77.	24 collerets, 2½		36
78.	24 " 3		72
87.	100 5 ruff, 32½		1 63
99.	911 2 " 80		1 60
100.	193 2 " "		1 60
			10 91

Bill "J."

ST. LOUIS, *July 24th*, 1877.

M. S. Cohen bought of J. Lewis and Co.

14 pair Wo's' Pol., 50, 70		17 30
12 " " " 25, 70		8 65
		25 95

237 *Affidavit of Jas. D. Faulkner for Defendants.*

JAMES D. FAULKNER, *who*, being duly sworn, upon his oath says:

My name is James D. Falconer; my age, thirty-two years; my residence, the city of St. Louis, Missouri; my occupation, merchant.

I was a member of the firm of Faulkner, Millard and Co., auctioneers, during the time covered by the annexed bills.

I know M. S. Cohn and my firm frequently sold him goods.

I identify the papers attached to this affidavit, marked A, B, C, D, E, F, and G, and sealed with the seal of James P. Dawson, notary public, St. Louis county, Missouri.

They are bills of goods sold by my said firm to M. S. Cohn and shipped to him at Ft. Smith, Arkansas, at or about the time of their respective dates.

These goods were sold to M. S. Cohn solely upon his individual credit and we looked to him alone for payment.

A large proportion of these goods were from bankrupt stock.

JAMES D. FAULKNER.

(Jurat of notary public.)

238 *Bill "A."*

ST. LOUIS, Mo., 5, 2, 1877.

Mr. M. S. Cohen bought of Faulkner, Millard & Co., successsrs to Heed, Clark, & Faulkner.

21.	50.	12	men's b'f sew. cong.	70	8 90
25.	50.	12	" kip lace plow	77½	9 80
26.	50.	24	" " 2 buck plow	97½	23 90
164.	25.	7	miss-' serge pol.	52½	4 45
167.	25.	7	" "	52½	3 93
					50 98

Bill "B."

ST. LOUIS, 5, 7, 1877.

M. S. Cohn bought of Faulkner, Millard and Co., successors to Heed, Clark and Faulkner,

35.	25.	12 prs. wo's' cf. pol., 97½		11 95

239 *Bill "C."*

ST. LOUIS, *May 9th*, 1877.

M. S. Cohn bought of Faulkner, Millard and Co., successors to Heed, Clark and Faulkner,

72.	25.	12 prs. kid S. lace, 105	12 85
		Less 2 prs. short	2 10
			10 75

Bill "D."

ST. LOUIS, *May 10th*, 1877.

M. S. Cohen bought of Faulkner, Millard and Co., auctioneers, successors to Heed, Clark & Faulkner,

3281.	122.	6 coats, 3.15	18 90
1809.	118.	7 " 8 vests, 5.40	37 80
1626.	108.	6 pants, 1.72½	10 35
2507.	102.	6 " .57½,	3 45
1267.	87.	6 suits, 3.10	18 60
		2 cases	50
			89 60

240–241 *Bill "E."*

ST. LOUIS, 5, 14, 1877.

Mr. Cohen bought of Falconer, Millard and Co.

27.	50.	24 men's b'f Alexis, 1.20	29 30
36.	50.	12 " c'f boots, 1.65	20 30
76.	50.	12 " " 2.25	27 50
82.	25.	12 Wom's G., cong., .60	7 45
86.	25.	11 Miss-' G. S. lace, .80	9 05
99.	50.	12 men's P. boots, 1.90	23 30
			116 90

Bill "F."

ST. LOUIS, *May* 23, 1877.

M. S. Cohn bought of Falconer, Millard and Co.

91.	50.	6 men's c'f boots, 2.20	13 70

Bill "G."

ST. LOUIS, *July* 18, 1877.

M. S. Cohn bought of Falconer, Millard and Co.

54.	25.	12 p'rs wom's G., cong., .50	6 25
88.	--	24 " " .50	12 50
			18 75

242 *Interrogatories to be Propounded to Louis Hanauer for Defendants.*

1st. State your name, age, residence, and business.

2d. State what business, if any, you were engaged in during the year 1875, and if connected with any firm, and where it was doing business.

3rd. Do you know M. S. Cohn, one of the defendants in this cause? If you —, how long have you known him?

4th. Have you known him by any other name than M. S. Cohn? If you —, state by what name.

5th. State whether or not the said Cohn ever did business with the firm you have named (if you have named any). If you —, state briefly what was the nature of the business and approximate amount of it.

6th. State where the said Cohn was doing business between the fall of 1872 and the summer of 1875.

7th. State whether or no you know the defendant Isaac Cohn. If yea, for how long?

243 8th. State whether your said firm ever had any business with Isaac Cohn. If yea, where was he doing business?

9th. State whether or no Isaac Cohn and the said M. S. Cohn were doing business together after the fall of 1872 and prior to the summer of 1875.

10th. If you have stated that the said M. S. Cohn did business with your firm, state in whose name it was done, and upon whom your firm relied for payment.

11th. If you have stated that you sold goods or advanced money to the said —, to whom was the money sent or goods shipped, and to what place or places?

12th. State whether or not the said M. S. Cohn was doing business with your firm, Schoolfield, Hanauer and Co., — he ever had any balance to his credit in the hands of your firm, particularly in the year 1875. If you —, give the date and amount.

13th. If you have stated that the said M. S. Cohn had money in the hands of your said firm in 1875, now state what became of it if paid, when, to whom, and the amount paid.

CLENDENING AND SANDELS,
Sol's for Defendants.

244 Cross-interrogatories by plaintiff's att'ys:

1st. How long have you been in business, where, and in what kind of a business?

2d. Do you know the condition of trade and the general financial status among merchants in Arkansas and elsewhere during the years dating from 1875 to 1878 and prior to 1875. If yea, is it not a fact that during those years many merchants and banks failed, some of long and honorable standing; that there was a condition of general stagnancy prevailing, and that during those years merchants made no more than expenses, except merchants of large capital; and is it not true that during those years the firm of Schoolfield, Hanauer

and Co. lost by bankruptcy and failures heavily in all parts of Arkansas?

3rd. If you say that M. S. Cohn had money in your firm, state from whence you derive your information.

4th. State how much of the testimony given in response to direct interrogatories is based on actual knowledge, and how much upon information communicated to you by others.

245 5th. State whether any of the matters testified to in response to direct interrogatories, based upon your actual knowledge, are so clear in your memory and mind that you will affirm the same without reservation.

6th. What interest had Isaac Cohn, cousin of M. S. Cohn, in the business at Jones' Landing? If you say none, state how you know.

7th. What interest has Isaac Cohn in the business of M. S. Cohn at Fort Smith now?

8th. How many of the matters testified herein to are based upon information communicated to you by defendant M. S. Cohn himself, and how many upon information communicated to you by others?

COHN AND COHN,
Att'ys for Plaintiff.

246 *Interrogatories to be Propounded to Robert Davis, by Defendants' Att'ys.*

1st. State your name, age, occupation, and residence.

2d. Do you know M. S. and Isaac Cohn, the defendants in this cause? If yea, how long have you known them?

3rd. Do you know whether or not they were in business during any part of the year 1872? If yea, where?

4th. If you have stated they were in business, state whether or no they were partners.

5th. If you have stated they were partners, state whether or not they dissolved the partnership; and, if so, under what circumstances?

6th. If you have stated that they dissolved partnership, state whether both or either of them went into or remained in business. If both or either of them were in business, state w-ere.

7th. If you have stated that M. S. Cohn went into business, state where, and briefly give such history of his business between fall of 1872 and summer of 1875 as you may be able.

247 8th. If you have stated that M. S. Cohn was in business from fall of 1872 to summer of 1875, state what your means of information were; also whether or not you sold him goods. If yea, in what quantities?

9th. State whether or not you know of any difficulty between M. S. Cohn and Isaac Cohn, and whether they were on friendly terms from fall of 1872 to spring of 1875.

10th. State whether or not you know where M. S. Cohn was from spring of 1875 to the fall of same year.

11th. State whether or not M. S. Cohn has been in business any-

where since fall of 1875 and up to present time. If yea, state when and in what places.

12th. If you have stated that you, for the several houses you have represented, sold goods to M. S. Cohn, state upon whose credit, and upon whom the houses relied for payment.

13th. State whether or no you have ever seen M. S. Cohn at Newport, Arkansas. If yea, state when and what, if anything, he was doing there.

14th. State whether or not he had a family at that time.

248 If yea, state where they lived and whether he was keeping house with them.

CLENDENING and SANDELS,
Solicitors for Defendants.

Cross-examination:

1st. Is your recollection clear about all the matters within your personal knowledge, as testified to by you in response to direct interrogatories, so that you are willing to affirm same without reservation?

2d. How much of your testimony herein is based upon personal knowledge, how much upon information communicated by M. S. Cohn and Isaac Cohn, the defendants, or either of them, and how much upon information communicated by any others?

3rd. Have you personal knowledge of the condition of things in financial and commercial circles in Arkansas and elsewhere in the United States during the years occurring between 1873 and 1878; and, if so, was it not a condition of stagnancy and failure,

249 during which the house you represent and other houses lost heavily in Arkansas by bankruptcies and other modes of failures in all parts of the State?

COHN AND COHN,
Att'ys for Plaintiff.

250 *Deposition of Louis Hanauer, for Defendants.*

Deposition of LOUIS HANAUER, in answer to the foregoing interrogatories, taken at Memphis, Tennessee, on the 31st day of May, 1880, at the office of Commissioner Trezevant:

1st. My name is Louis Hanauer; I am 59 years old; I reside in Shelby county, Tenn., near Memphis; I am a merchant and a member of the firm of Schoolfield, Hanauer and Co.

2d. I was in the grocery and cotten factoraze business in 1875 as a member of the firm of Schoolfield, Hanauer and Co., at Memphis, Tennessee.

3rd. I have known M. S. Cohn ever since February, 1874.

4th. I have never known him by any other name than Mark S. Cohn; we sometimes called him "Mark."

5th. From February, 1874, to March, 1875, we sold him groceries and he shipped us cotton. The amount of our business transactions during that time amounted to about twelve thousand dollars with him.

6th. He was doing business at Jones' Landing, Ark's river, Auburn post office.

251 7th. To my sorrow I do know him; he was doing business in Pine Bluff, Arkansas, from October, 1872, until Sept., 1876, when his store at Pine Bluff burned out; I knew him since October, 1872.

8th. Our firm was doing a very large business with him at Pine Bluff from 1872 til- 1876.

8th. Never, to my knowledge. They never had anything to do with each other that I ever heard of. Their accounts on our books were kept separate and their goods shipped to different places, and each in their respective names.

10th. He did business with us in his own name and we relied upon him only for payment of his accounts.

11th. We sold goods and advanced money both to said M. S. Cohn, to whom the packages were all marked and shipped at Jones' Landing, Arkansas river. Perhaps we may not have advanced him money, as on reflection I remember that he generally had money to his credit.

12th. In March, 1875, M. S. Cohn sold out his stock of goods at Jones' Landing, on Ark's river, and he came over here to

252 make settlement with us on his way to Europe; our books showed that he had a balance due him at that time of over five thousand dollars, which we paid him in cash.

13th. We paid it to him in our office in Memphis, and my recollection is that I went with him to the German National Bank in Memphis, where he bought European exchange with the money we paid him.

His account on our books was closed March 30th, 1875. I have not seen him since then until the summer of 1879, when I met him in St. Louis, when he told me that he had three stores in Arkansas, but he was living in St. Louis with his family. Our business transactions having been agreeable, I asked him to resume business with us.

We were doing business in St. Louis in the summer of 1879, when yellow fever was prevailing in Memphis. He then bought goods of us and shipped us cotton, and has done the same since our return to Memphis after the fever. We consider him one amongst the best customers on our books.

He is a cash man, in fact; I mean by this that he pays whenever he promises.

253 Cross-examination of LOUIS HANAUER, in answer to said X interrogatories:

X 1. I have been in business since 1840—at first at Pocahontas, Ark's, then at Memphis as a merchant dealing in groceries and cotton; in Pocahontas, from 1840 to 1861, I kept a general country store.

X 2d. I was familier with the general financial status of this country and Arkansas from 1873 to 1878, and for a longer period. In 1873, after the panic, there was a general decline of all kinds of

merchandise and real estate, and, in consequence, a general depression of business followed. Thero were many failures, though many careful men made money in those years. We lost a good deal by bankruptcies in those years.

X 3. He shipped us considerable cotton, which was sold, and the proceeds placed to his credit. I know it because our books show it, and because I paid him over $5,000 cash on settlement in March, 1875.

X 4. It is, on actual knowledge, verrified by an examination of our books.

254 X 5. I have carefully gone over our books from 1872 to 1876, and what I have stated, both in my examination-in-chief and on cross-examination, I do not hesitate one moment to say is true, and I am willing to swear to it without any reservation.

X 6. If he ever had any interest in the business at Jones' Landing I never knew it. Both Isaac and M. S. Cohn did business with us, but kept seperate accounts, and their goods were always shipped separately. If they had had any connection I think I would have known it.

When Isaac Cohn failed he was in our debt, and, if he had had any interest in the Jones' Landing store, we certainly would have made our debt, because M. S. Cohn was always good.

X 7. None that I know of.

X 8. I have said nothing in this examination derived from M. S. Cohn or any one else, and so stated heretofore.

And further this deponent sayeth not.

LOUIS HANAUER.

(Jurat of commissioner.)

255 *Deposition of Robert Davis for Defendants.*

And the said ROBERT DAVIS, being next duly sworn, in answer to the foregoing interrogatories, deposes and says:

Ans. to Int. 1st. My name is Robert Davis; age, 42 years; occupation, travelling agent for B. Lowenstein and Bros., and residence, Memphis.

2d. I have known them both since 1872.

3rd. They were both in business as partners for a short time—about 4 months in 1872—at Pine Bluff.

4. They were partners four or five months. I can't state the length of time precisely.

5. They did dissolve their partnership on account of personal quarrels with each other and not being able to agree.

6. Isaac Cohn, after the dissolution, remained in the old stand, but M. S. Cohn moved down on the same street and on the same side some eight or ten houses. M. S. Cohn remained in business at this latter place some six months and then moved down the Arkansas river to Jones' Landing, or, as it is sometimes called, "K. Smith landing."

Isaac Cohn staid in Pine Bluff until he was burned out.

256 7. As I said before, M. S. Cohn removed from Pine Bluff down to Jones' Landing, I think, in January, 1873, where he continued and did a good business until about the spring of 1875, as I now recollect, when he sold out and went to Europe. I sold him a great many goods while he was at Jones' Landing.

He frequently discounted his bills, and, from all that I could see, was making money.

8. I know, from the fact that I was at his store at Jones' Landing and selling him goods, at least four and sometimes five times a year. I was selling during those years for various houses at Memphis.

I sold him bills frequently as high as $1,200 and $1,500, and considered him good for $1,500 and $2,000 at any time.

9. They were bitter enemies during all that time.

10. He was in Europe as I understood; he bade me good-bye, saying that he was going to Europe.

11. I met him in the fall of 1875, after his return from Europe, in Newport, Ark., where he had opened a store and was doing
257 business. He afterwards commenced business (I think, in fall of 1877) in Fort Smith, Arkansas.

12. M. S. Cohn.

13. I saw him in his place of business, in Newport, Arkansas, in the fall of 1875, after his return from Europe, and I sold him goods there. He was doing a general country store business.

14. He had his wife with him and was keeping house. I stopped there frequently; eat and slept there several times.

Cross-examination:

X 1. I am positive of all I have stated; I may have been mistaken in some of the dates, but as to the facts I am positive.

X 2. All my statements are from my personal knowledge.

X 3. I was familier with the financial status in Ark., because I travelled there; there were a great many failures in 1873–74, and many afterwards in 1875, '6, '7, and 1878, but not so many as in 1873 and '74.

Our houses lost their proportions during those years.

And further deponent sayeth not.

ROBERT DAVIS.

(Jurat of commissioner.)

258 *Interrogatories and Cross-Interrogatories to be Propounded and Answered by Harry Cohn for Defendants.*

1st. State your name, age, residence, and occupation.

2d. Are you acquainted with Marx Boschwitz, formerly of Watson's Station, Arkansas?

3rd. Are you acquainted with Isaac Cohn, formerly in business at Pine Bluff, Arkansas?

4th. State where you were doing business between November 1st, 1876, and 15th of March, 1877.

5th. State whether or no the said Boschwitz shipped to you for the

said Isaac Cohn any goods from Watson's Station, Ark's. If yea, state how many packages or boxes there were.

6th. State what was done with those goods; if sold, state to whom and the price paid, if you know.

7th. State whether all the goods received by you from Boschwitz at Watson's Station for Isaac Cohn were sold to the same person.

CLENDENING AND SANDELS,
Att'ys for Defendants.

259 *Cross-Interrogatories to be Propounded to Harry Cohn by Pl'ffs' Attorneys.*

1st. How many and what kind of boxes or sized boxes did you receive from Boschwitz for Isaac Cohn? Attach the bill of lading or memorandum of said shipment, if you can procure it.

2d. Were the goods in said boxes properly ticketed? If so, then state what kind of tickets they had.

3rd. What were your instructions regarding said boxes of goods; from whom were these instructions; were they verbal or in writing? Produce the written instructions, if you say they were in writing.

4th. What was the market value of said goods; was it as much as $2,500? If less, then state how much they were worth to a merchant who actually needed them.

5th. Do you know whether all the goods held by Boschwitz as bailee of Isaac Cohn were contained in said boxes?

6th. How many per cent. on the dollar of the cost of said goods were they sold for; were they not sold at a great sacrifice
260 because Cohn wished to dipose of them badly and quietly?

7th. Did you sell the goods in person; otherwise name the person who sold them; to whom were they sold? Attach a memorandum of the amount and number of articles so sold, if you have it or can procure it.

8th. What were your instructions and from whom regarding the sale of said goods? If in writing, produce them here and attach them as exhibit hereto.

9th. Append all letters, memorandums, or writings of any kind in your possession which have bearing on question of the receipt and disposition of said goods or boxes.

10th. What relationship exists between you and Isaac Cohn?

11th. What was your compensation for the services rendered to Isaac Cohn in this matter; was such compensation in money or in goods or otherwise?

12th. State any other fact for the benefit of either party hereto which is not covered in the foregoing interrogatories & answers.

261 13th. When were you notified that this deposition would be required of you; who notified you; how were you notified? If in writing, then append such notification or instructions hereto as part of your deposition.

14th. What part of your foregoing answers, either direct or cross, is based upon your own knowledge, and what on information?

State, if any be on information, what and from whom such information came to you.

COHN AND COHN,
Plaintiffs' Solicitors.

262 *Interrogatories and Cross-Interrogatories to be Propounded to and Answered by H. Morris for Defendants.*

1st. State your name, age, residence, and occupation.

2d. State whether you were connected with any business firm between November, 1876, and April, 1877. If yea, state what firm and in what place.

3rd. State whether or not you know Isaac Cohn, formerly in business at Pine Bluff, Arkansas.

4th. State whether or not you saw the said Isaac Cohn in Memphis in March, '77.

5th. State whether you bought any goods of him about that time. If yea, state what you paid for them and how many packages or boxes there were.

6th. Please give the date of such purchase as nearly as you can, refreshing your memory by check-book or any other memorandum you may have.

263 If the goods were in any storehouse or place of business of any person when purchased by you, state whose.

CLENDENING AND SANDELS,
Defendants' Solicitors.

Cross-Interrogatories to be Propounded to H. Morris by Pl'ff's Att'y

1st. Who were the indivitual members of your firm in 1876 and 1877?

2d. Did you have any transaction with Isaac Cohn in March 1877, in your own person, or was it some other member of your firm, if any transaction occurred?

3rd. If you say it was yourself who transacted business with Isaac Cohn in March, 1877, then say whether you are quite certain that it was in March of that year, and, if certain, then state upon what you base such certainty. If based upon memoranda in your or your firm's books, then furnish such memoranda or a copy thereof; if on a letter, then produce the original.

264 4th. If you purchased any goods from Isaac Cohn at the aforesaid time, then state what kind of goods they were, how many as near as possible of each kind, and in how many and what kind of boxes they were packed.

5th. What line of business was your firm engaged in at that time; was it not your business or rather object to buy auction goods or job lots below actual values or market prices?

6th. How much did you pay Isaac Cohn for said goods in cash; how much in notes or acceptances; how much in trade or otherwise, and what per cent. of the actual market prices did your purchase cost you? Attach a copy of the bill or the original, if possible, of said purchase hereto as an exhibit.

7th. What were Cohn's reasons as given to you for the sale of said goods, and why he sold them so much under their value?

8th. How much stock did you carry in 1877, and of what kind was it; what is the average amount of your sales p-r day & month during 1877? State upon what you base your answer herein.

9th. Attach the stub of your check-book or the check itself with which you paid for the Cohn purchase.

265 10th. Did you not buy said goods so cheap because they were heavy goods, or mostly so, and out of season in the spring and summer?

11th. When were you notified and by whom that this deposition would be required of you; what was your instruction in relation thereto? And, if in writing, produce it and attach it hereto as part of your deposition.

12th. Have you answered the foregoing interrogatories, either direct or cross, from your own personal knowledge or on information, or both; if the latter, then state what part of your answer is based upon your own knowledge, and what part on information, and from whom such information is or was derived by you; and, if based on writings, then attach such written information hereto as part of your deposition.

COHN AND COHN,
Plaintiff's Solicitors.

266 *Interrogatories and Cross-interrogatories to be Propounded and Answered by Mark Boschwitz for Defendants.*

1st. Interrogatory. State your name, age, residence, and occupation.

2d. Are you acquainted with A. Washer and Isaac Cohn, both formerly in business at Pine Bluff, Ark.?

3rd. Where were you doing business between October 1st, 1876, and March, 1877?

4th. If you have stated that you were in business at Watson's Station, Ark., state whether after October 9th, 1876, and prior to March 1st, 1877, you received any goods from A. Washer from Pine Bluff for the said Isaac Cohn. If yea, state how many boxes or packages there were.

5th. What was done with those goods?

6th. If you have stated that they were shipped to any other place, state to whom and to what place they were shipped.

7th. Were all the goods received from Washer for Cohn so shipped?

267 8th. State, as near as you can, about what time they were shipped.

9th. State, as near as you can, about what time they were received.

CLENDENING AND SANDELS,
Defendants' Solicitors.

Cross-interrogatories to be Propounded to Mark Boschwitz by Plaintiff's Counsel.

1st. How many and what kind or sized boxes did you receive in custody from B. Washer for Isaac Cohn; how were they marked?

2d. Did you receive them by railroad or otherwise? Attach the original bill of l'd'g hereto if you can produce it.

3rd. How were the goods marked when you took them out of the boxes?

4th. What were your instructions in regard to the disposition of these goods; who gave you such instructions, and in whose behalf were they given?

5th. How did you dispose of the goods after you took them out of the boxes; what was done with the boxes after they were emptied?

268 6th. Is it not true that the goods received by you through Washer were mixed in your stock on the shelves and counters, &c., so as to incorporate them with your own goods, and hinder identification of them by others troublesome if not actually impossible?

7th. Were the instructions relating to the disposition of said goods verbal or in writing. If the latter then attach hereto such original writings, if possible, otherwise give, as near as possible, the substance of such writings.

8th. How many of the goods so received from Washer did you buy from and sell for Cohn; how many of the goods or what amount of money did you receive for your trouble in the premisses from said Cohn, or from any one else, for and in behalf of Cohn; how much money did you turn over to Cohn for goods sold for or *or* bought of him, — part of those in your custody for him?

9th. If you say you neither sold -or bought any of said goods, how did you finally dispose of them; did you gather them together in person from your own stock when they were mixed, or did your clerks do so?

269 10th. How long were they in your custody, all told; how did you ship them, and to whom; have you the original bill of lading? If so, attach it hereto.

11th. What kind and quality of goods were in those boxes, and about how many dozen of each?

12th. Were not your own instructions in relation to these goods of Cohn to the effect that you should dispose of them in such a manner that identification of them became impossible, or nearly so, or something to that effect, though not in those exact words?

13th. Will you state on your oath that all of the goods so received by you and held in custody for Cohn were repacked and shipped; do you answer this question from your own knowledge, or on the say so of your clerks or brother?

14th. How and in what manner were you compensated for your trouble in this matter; are you related to Isaac Cohn in any way; were you ever connected in business transactions or otherwise. If so, then state such fact fully.

15th. What was the value of the goods you held in custody for Cohn; was it as much as $2,500; if not *not* that amount, then state what amount of value either Cohn or yourself attached to
270 said goods at the time?

16th. State any other fact in relation to the receipt and disposition of said goods by you not covered by your previous answers to the direct and cross-interrogatories herein.

17th. Were you apprised by any one that these depositions would be taken? If so, by whom were you so apprised? What was the purport of such notice? Was it in writing? If so, then append such written document hereto as part of your deposition.

18th. Have you formed your foregoing answers on your own knowledge, wholly or in part? If partly on information, then state what part is based on your own knowledge and what on information, and from whom you received such information. Append all letters bearing on this subject which you may have from Isaac Cohn or any one else in said Cohn's behalf.

COHN AND COHN,
Plaintiff's Solicitors.

271 *Deposition of Harry Cohn to Foregoing Interrogatories.*

The depositions of Harry Cohn, H. Morris, and Marcus Boschwitz, taken on the 8th day of September, 1880, at the office of Frezevant and Cary, No. 8 Madison St., in the city of Memphis, county of Shelby, and State of Tennessee, to be read in evidence in an action between Fred. Kramer, assignee, &c., plaintiff, and Isaac Cohn and M. S. Cohn, defendants, pending in the district court of the United States for the western district of Arkansas:

HARRY COHN, being first duly sworn, deposes and says, in answer to the foregoing interrogatory:

In answer to 1st: My name is Harry Cohn; age, 32 years; residence, Memphis, Tenn; and occupation, clothing merchant.

In answer to 2d: I am.

In answer to 3rd: I am.

In answer to 4th: I was doing business at No. 227 Main street, in Memphis, Tenn., between those dates.

In answer to 5th: He did. My recollection is that there were two cases of clothing.

272 In answer to 6th: They were sold to H. Morris and Bro. My recollection is that the 2 cases brought $275.00 or $300.00. I kept no record of this transaction; it did not pass through my books.

In answer to 7th: They were.

X Examination. Answers of Harry Cohn to Interrogat's by Plaintiff's Counsel.

In answer to 1st X Int'y: I received two medium-sized boxes of clothing; I cannot procure the bill of lading.

In answer to 2d X Int'y: I believe the goods in said boxes were

properly ticketed; but I don't recollect what kind of tickets they were.

In answer to 3rd X Int'y: My instructions were to sell the goods for account of Isaac Cohn. Boschwitz instructed me to hold the goods until I heard from Isaac Cohn. Boschwitz'- instructions to me were in writing, but I have not kept the letter. I held the goods until I heard from Isaac Cohn.

My recollection is that he (Cohn) was here when I sold them.

In answer to 4th X Int'y: To the best of my judgment, they were worth about $400. They were old, shoddy goods, which I
273 could not handle at all.

In answer to 5th X Int'y: I do not know this of my own knowledge, but Boschwitz told me that these were all the goods he held.

In answer to 6th X Int'y: I think they brought between sixty and seventy-five per cent. of their cost. I think they brought a very fair price, considering the quality and style of the goods. I don't know how badly Cohn wanted to dispose of them, or whether he wanted it done quietly or not.

In answer to 7th X Int'y: I was instrumental in selling them. To the best of my recollection, Isaac Cohn was here in person and I helped him to make the sale. They were sold to H. Morris & Bro.

I have no memorandum of the amount and number of articles sold.

In answer to 8th X Int'y: I have answered this question in my answer to 3rd X interrogatory.

In answer to 9th X Int'y: I have no such memorandums, or letters or writings.

In answer to 10th X Int'y: None.

In answer to 11th X Int'y: I received no compensation at all.

274 In answer to 12th X Int'y: I know of no other fact.

In answer to 13th X Int'y: About five weeks ago Mr. Isaac Cohn wrote me that he would want to take my deposition. I did not keep the letter; tore it up and threw it away. It was only a few lines notifying me of the fact that he wanted my testimony.

In answer to 14th X Int'y: My answers show for themselves. Where I have stated facts based on information I have said so.

And further deponent sayeth not.

HARRY COHN.

(Jurat of notary public.)

Answer of H. Morris to Foregoing Interrogatories for Defendant-.

And the next witness, H. MORRIS, being of lawful age, and being first duly sworn, doth depose and say:

In answer to 1st Int'y: My name is H. Morris; age, 32 years; residence, Memphis, Tennessee; and occupation, merchant.

In answer to 2d Int'y: I was a member of the firm of "H. Morris and Bro.," doing business in Memphis between those dates.

In answer to 3rd Int'y: I do.

275 In answer to 4th Int'y: I saw him in Memphis in the early part of 1877, but cannot remember if it was in March. I have now refreshed my memory by looking over my check-book and finding the date at which I bought goods from him, and I find that he was here in March, 1877.

In answer to 5th Int'y: I did buy goods from him in March, 1877; my recollection is that there were two, possibly three, boxes of goods, for which I paid him $375.00.

In answer to 6th Int'y: The purchase was made between the 8th and 15th of March, 1877, and the trade was closed on the 15th by my check for the money.

In answer to 7th Int'y: They were in the store of Harry Cohn, on Main street, Memphis, Tenn.

Answer of H. Morris to Foregoing X Interrogatories.

In answer to 1st X Int'y: H. Morris and L. Morris.

In answer to 2d X Int'y: The transaction was with me in person.

In answer to 3rd X Int'y: I am certain that the transaction took place in March, 1877. I base this statement on the fact that
276 I have found the check which I gave in payment for the goods, and I file a copy of said check herewith as "Exhibit A" to this deposition.

EXHIBIT "A."—*Face of Check.*

(Copy.)

No. ——. MEMPHIS, TENN., *March* 15, 1877.

The Manhattan Bank.

Pay to Harry Cohn or order three hundred and seventy-five dollars.

$375.00. H. MORRIS & BRO.

Back of check: (Signed) Harry Cohn.

This check is made payable to the order of Harry Cohn. This, according to the best of my recollection, was done at the request of Mr. Isaac Cohn himself, for reasons best known to himself. I know this to be the check I paid to Isaac Cohn for these goods.

In answer to 4th X Int'y: The goods were clothing, consisting of odd coats and pants; stock which had been a great deal han-
277 dled. I am unable to say how many of each kind there were; my recollection is that there were two, possibly three, medium sized packing boxes.

In answer to 5th X Int'y: We were doing a general merchandize business. We did then, and do now, attend auctions, and buy job lots of goods as cheap as we can get them.

In answer to 6th X Int'y: We paid him $375.00 for these goods, all cash. I cannot exactly say what per cent. of the market price for these goods we paid. My recollection is that we paid him all I thought a lot of goods of that kind were worth at that time. I have no bill of the purchase; do not remember that I took any; my rec-

ollection is that I examined the goods, and after we had agreed upon a price (which we did not at first do) he turned over the goods to me, and I gave him a check for them.

In answer to 7th X Int'y: He gave me no reasons for selling the goods, and I think he got as much for them as they were worth.

In answer to 8th X Int'y: The amount of stock we carry we consider our own privat- business, and I decline to say how much. Our stock was general merchandise. The amount of our sales is also our own private business, and we decline to give this information.

278 In answer to 9th X Int'y: I have attached a copy of the check with which I paid for these goods as Exhibit "A" hereto; I do not care to give up the original check.

In answer to 10th X Int'y: I think we paid all the goods were worth; don't remember that the goods were all heavy; I think it was a mixed lot.

In answer to 11th X Int'y: I did not know that my testimony was wanted until I was summoned this morning by the officer.

My instruction was to proceed to the notary's office, which will be found in the paper the officer served on me; since I refresh my memory, I believe I did receive a letter from Isaac Cohn some eight or nine months ago, but I do not remember that he said anything in it about taking my deposition. The letter was of no importance, and I did not preserve it.

In answer to 12th X Int'y: My answers show for themselves what I state of my own knowledge, and what from information from others. I have no writings but the check I have filed.

And further deponent sayeth not.

H. MORRIS.

(Jurat of notary public.)

279 *Answers of M. Boschwitz to the Foregoing Interrogatories.*

And the next witness, MARCUS BOSCHWITZ, of lawful age, being first duly sworn, doth depose and say as follows:

In answer to 1st Int'y: My name is Marcus Boschwitz; age, 30 years; residence at present, Memphis, Tenn.; and occupation, merchant.

In answer to 2d Int'y: I know them both.

In answer to 3rd Int'y: I was doing business at Watson, Ark., between those dates.

In answer to 4th: I received some goods during that time from A. Washer for Isaac Cohn. My recollection is that there were two or three small cases of goods.

In answer to 5th: I kept these goods in my store for some time, and then sent them to Harry Cohn at Memphis, Tenn.

In answer to 6th: They were shipped to Harry Cohn at Memphis, Tenn.

In answer to 7th: All but one or two coats which I sold myself.

In answer to 8th: My recollection is that they were shipped, either in December, 1876, or Jan'y, 1877.

In answer to 9th Int'y: My recollection is that I received
280 them shortly after Isaac Cohn's business house was burned in Pine Bluff; don't remember the exact date.

Answer of M. Boschwitz to Foregoing X Interrogatories.

In answer to 1st X Int'y: There were two or three small-sized boxes; I am more inclined to think there were two than three; they were marked either "A." or "M." Boschwitz; I don't remember which.

In answer to 2d X Int'y: I received them by railroad; I cannot produce the bill of lading.

In answer to 3rd X Int'y: They were ticketed, but I don't remember in what mark.

In answer to 4th X Int'y: The goods were offered to me, and I declined to buy them, because they did not suit me; I kept them in the store for some time; Isaac Cohn, after I declined to buy them, instructed me to keep them to his order.

In answer to 5th X Int'y: I opened the goods and examined them with the view to purchase them if the suited me; concluding not to buy them I repacked them in the same boxes I had taken them from, except one or two coats which I sold.

In answer to 6th X Int'y: These goods, in unpacking, were
281 placed on my counters, which also contained my own goods, and an outsider, not knowing our seperate marks, would have been puzzled to say which were his and which mine; they were not, however, incorporated with my stock, and I had no trouble in seperating them from mine when I went to repack them.

In answer to 7th X Int'y: My instructions in regard to these goods were from Isaac Cohn himself, and were in writing; after carrying out his instructions I considered the letters of no value and did not preserve them; his instructions to me were in substance that if I wanted the goods at the price he asked, I could take them and have my own time to pay for them; if they did not suit me I was to hold them subject to his order; this latter I did, and he afterwards wrote to me and instructed me to send them to Harry Cohn, at Memphis, Tenn., which I did.

In answer to 8th X Int'y: I only sold one or two coats, for which I paid him the money. He was an old friend of mine, and knowing that he had met with misfortune in being burned out, I charged him nothing for the trouble I was at.

In answer to 9th X Int'y: I unpacked and packed these goods myself, and shipped to Harry Cohn, at Memphis, Tenn., all the
282 identical goods *goods* I had received, except one or two coats which I sold, and for which I paid Mr. Isaac Cohn.

In answer to 10th X Int'y: I must have had these goods in my custody a month or six weeks. I shipped them by rail to Arkansas city; from there they must have gone by boat to Memphis. I consigned them to Harry Cohn, Memphis, Tenn. I have not the bill of lading.

In answer to 11th X Int'y: It was a mixed lot of clothing—odds and ends. I don't remember how many dozen there were.

In answer to 12th X Int'y: No, sir.

In answer to 13th X Int'y: I will so state on my oath, with the exception of one or two coats that I sold. This statement is made from my own knowledge.

In answer to 14th X Int'y: I received no compensation. I acted out of friendship for Isaac Cohn, without pay. I am not related to him in any way. I was never connected in business with Isaac Cohn.

In answer to 15th X Int'y: I considered the goods worth about
283 $400.00. I would not have paid more. My recollection is that Cohn valued them at about near $500.00, which I declined to give.

In answer to 16th X Int'y: I know of no other fact.

In answer to 17th X int'y: I first heard that I was wanted to give my deposition in this cause about 10 days ago from Mr. Harry Cohn. No person has written me about it. Yes; my brother, who was at Atcheson, Kansas, wrote me word about a month ago that questions had been sent me there to answer in this case. I had forgotten this. I did not keep the postal card he wrote me.

In answer to 18th X Int'y: What I have stated is of my own knowledge. I have no letters bearing on this case.

And further deponent sayeth not.

MARCUS BOSCHWITZ.

(Jurat of notary public.)

284 *Deposition of A. H. Reynolds for Defendants.*

A. H. REYNOLDS, being duly sworn according to law, testifies on behalf of the defendants as follows:

I am a resident of Fort Smith, Ark's; I am over twenty-one years of age.

I am a manufacturer and dealer in furniture.

In October, 1876, I resided at Pine Bluff, Ark's, and was mayor of the city. I was present at a fire in Pine Bluff on the morning of the 9th day of October, 1876.

I know Isaac Cohn; he was in business in Pine Bluff at the time; I lived within a square and a half of his store; I was frequently in and past his store.

I was in his store a few days previous to the fire; he had a large store building, and it was full of goods; he had a fine stock; I do not know the value, but he had a large stock of goods. The store building and stock of goods of Isaac Cohn *was* burned up at the fire above mentioned.

A. H. REYNOLDS.

Deposition of Daniel Harrington for Defendants.

DANIEL HARRINGTON, being next duly sworn according to law, says:

I reside in Fort Smith, Ark's; my age, thirty-two years; my occupation is a clerk in the store of M. S. Cohn; I have been employed

there three years; during that time I have been familier with the goods received in the store and handled the invoices; I have clerked in other stores; have been clerking about eleven years; I
285 was there at the opening of the first goods received in this business in 1877; the goods purchased at the first *was* bought much lower than goods bought in the regular way.

The goods were bought at auction, and we made a large profit on them, averaging from sixty to seventy-five per cent. Since that time we have received considerable goods in the same way—bought very cheap and sold at a good profit.

I know something of the stock of goods called the widow's stock; the profit on this was very large; I could not state how much, but think it fully as large as the first stock spoken of. It is usual for us to receive cheap lots of goods; in the stock we received a great many such goods.

Cross-examination:

Mr. Isaac Cohn employed me to clerk in the store of M. S. Cohn; I have been in the store ever since.

I never bought any auction goods; I know the goods were auction goods from the way they are put up and the house they are from.

I can mention the name of some of the houses: M. Stern and Co., Haggerty and Co., O. J. Lewis and Co. These are the principal houses from whom we buy auction goods; these houses may sell in job lots at privat- sale. I was never present at the purchase of any of these goods, and don't know of my own knowledge whether they were bought at auction or in job lots, except they were bought at an auction house.

I would suppose the average profits on goods bought regu-
286 larly in the same line to be twenty-five to thirty per cent.; I do not know what the actual profits of this business *was*.

I have no idea. The profits on the auction goods were twice as much as the goods brought regular.

We sold some goods at a very reduced price; staples we could not. Goods being bought low, of course we could sell them low. We could not have sold the goods as low if they had been purchased regularly. I was still in the employ there.

M. S. Cohn was here three or four times last year; am not certain; and three times the year before, I think; and I think he was here twice in the year 1877, about the first of August and the latter part of December, or the first of January of the succeeding year.

Redirect examination:

So far as my knowledge goes, the average profits in this business is larger than in other stores that I have clerked in. I was in the employ of William Breen, a merchant of Fort Smith, nearly nine years. Those goods we sold at reduced rates were sold at better profits than goods bought regular.

DANIEL HARRINGTON.

(Jurat of commissioner.)

287 *Deposition of M. S. Cohn for Defendants.*

Deposition of M. S. COHN, taken on behalf of defendants, on the 29th day of November, 1880, in the office of S. H. Clendening, Esq.:

(Informalities waived.)

The plaintiff's counsel objected to taking further deposition on part of the defendant because they have introduced their rebut-ing testimony, and the matters intented to be proven are not matters which could not have been discovered before the introduction of said rebutting testimony.

M. S. COHN, of lawful age, being duly sworn according to law, states:

I am M. S. Cohn, one of the defendants in this cause.

If you are in any way connected with a business closed up by a suit brought by Frederick Kramer, assignee, against Isaac Cohn and M. S. Cohn, state what your connection is with said business.

It is my store, and I have nobody connected or interested in the business with me.

With whose funds was that business started?

With my own funds. I started the business.

Whether, at any time, anybody has been interested in the business or put anything into it, from its commencement up to the present time? If so, state who that person is.

As I stated before, I started the business with my own funds, and there has been no one connected or interested with me in the
288 business from the commencement up to the present time; neither did any person put any money in this business but myself.

State whether you are now or ever was connected in business with your codefendant, Isaach Cohn?

I have been connected in business with Isaac Cohn in the year 1872; we dis-olved at that time; since that time we have not been connected in business; I have never since that time had any money from Isaac Cohn or anybody else in my business.

State whether since the dis-olution with Isaac Cohn, in 1872, Isaac Cohn has ever had any interest, direct or indirect, in your business at Fort Smith or elsewhere; if so, state what that is.

Since 1872 Isaac Cohn has never had any interest, direct or indirect, in my business in Ft. Smith or anywhere else.

State whether anything, either money, goods, credits, or anything of value, has been contributed, given, loaned, or placed under your control in any manner by any person in your business here at Fort Smith; if so, state fully when, what, and by whom.

There has never been anything, either money, goods, or credits, or anything valueable, either contributed, loaned, or placed under my controll by any person in my business in Fort Smith.

289 Cross-examination:

Is Mr. S. Brash, of Newport, a better business man than Isaac Cohn?

There is no comparison between Brash and Isaac Cohn, as Isaac Cohn is a thorough business man.

Is there any business at Indian Bay, Arks., in which you are interested?

Yes, sir.

What is the name of the firm?

"M. S. Cohn and Co."

When was that business started?

About the first of September, 1880.

Who is the Company?

My brother, Isaac Cohn.

Who is in charge of the business down there?

My brother, Isaac Cohn.

How large a stock is carried down there?

About six thousand dollars.

What interest has your brother in the store?

He gets 40% of the profits, and I get 60%.

Who furnishes the capital?

Part by him, and the balance by me; he furnished about fourteen hundred dollars, and I put in about two thousand dollars.

Re-examined:

State the difference between the Isaac Cohn of Indian Bay and the Isaac Cohn of Fort Smith?

290–291 Isaac Cohn of Indian Bay is my brother, and Isaac Cohn of Fort Smith is a second couisin of mine.

Are you and Brash, of Newport, connected in business?

No, sir; not since last spring; I sold out to him at that time.

Recross-examination:

Where was this brother of yours before he went into business at Indian Bay?

He was clerking for me at Newport.

Is the business at Fort Smith exclusively retail, or is it wholesale and retail; and if wholesale, how long have you been doing the wholesale business in connection with retail business?

I opened a retail store and sold all along small bills of goods to small county stores; as I saw it was more profitable than to retail, and since last year I am selling more goods by wholesale than I do by retail.

Redirect examination:

Ho- is the stock carried now compared with the stock carried a year ago, larger or smaller?

A good deal larger this fall than last.

M. S. COHN.

(Jurat of justice of the peace.)

292 And the defendant having rested, the complainant, by way of rebuttal, introduced the following deposition:

Interrogatories to be Propounded to and Answered by H. H. Hunn.

1st. State your name, occupation, age, & residence.

2d. Do you know Harry Nathan, of Pine Bluff?

3rd. Do you know, or have you ever seen M. S. Cohn, one of the defendants herein? If so, where and when?

4th. Have you ever seen said M. S. Cohn in Pine Bluff, Arkansas, at any time during the present year?

5th. Did you, at any time, at Pine Bluff, as cashier of the Merchants' and Planters' Bank of said Pine Bluff, or did said bank, while you were such cashier, at any time during the early part of 1880, cash any d'ft drawn by M. S. Cohn in favor of the said Henry Nathan, or did the said bank pay to the said Henry Nathan, for the said M. S. Cohn, any sum of money?

If so, state the day said d'ft was cashed, if cashed, or the said money paid, if paid, and if there was any draft, state on what bank it was drawn, for what amount, and to whose order, and at-

293 tach a copy of said draft, if you have such.

If any sum of money was paid state what sum.

6th. If you know anything about a payment made by or for M. S. Cohn to the said Henry Nathan, or any person for him, during the early part of 1880, state all you know about the same, at what time, in what way, for what amount, and all other particulars.

7th. State whether the matters inquired about — the preceding interrogatories 5th and 6th occurred in Pine Bluff, and whether they so occurred during said M. S. Cohn's stay in said city.

Deposition of H. H. Hunn in Answer to the Foregoing Interrogatories for Plaintiff.

H. H. HUNN, after first being duly sworn, deposes and says in answer to the foregoing interrogatories, as follows:

To answer 1st: My name is Horace H. Hunn; age, 48 years; occupation, cashier of the Merchants' and Planters' Bank; residence, Pine Bluff, Ark.

To answer 2d: I do.

To answer 3rd: I have no personal acquaintance with M. S. Cohn, but have seen him in Pine Bluff during the year 1880.

294 In answer to 4th: I saw M. S. Cohn in Pine Bluff fore part of 1880; I think in the month of January.

In answer to 5th: The collection book of the Merchants' and Planters' Bank shows that on the 29th of January, 1880, J. Fies and Co. (a firm in Pine Bluff) left for collection for their ac. a d'ft made by M. S. Cohn on J. M. Wiener and Co., St. Louis, Mo., for "two hundred and fifty ($250.00) dollars, payable to Henry Nathan, and endorsed in blank by him, and also by J. Fies and Co. A copy as near as may be of said d'ft is attached.

Face of Draft.

(Copy.)

$250. PINE BLUFF, ARK., *January*, 1880.

Pay to the order of Henry Nathan two hundred and fifty dollars, value received, and charge to account of

(Signed) M. S. COHN.

To J. M. Wiener and Co., St. Louis, Mo.

Back of Draft.

Endorsed by Henry Nathan and J. Fies and Co.: I certify this to be as near an exact copy of draft referred to in my deposition as books of Merchants' and Planters' Bank afford. H. H. Hunn. May 7th, 1880.

295 The witness received said draft from one of said firm in person, and he finds the entry on the said collection book to be in his handwriting. Proceeds of said draft, $248.75, was paid to said firm by a credit in open account, and subsequently checked out. There is no record in the books of said bank that any money was paid directly to Nathan for M. S. Cohn, nor was any so paid to my knowledge.

In answer to 6th: I know nothing about any such payment, if any was made.

In answer to 7th: The matters inquired about occurred in Pine Bluff, and I think (in fact am confident) the draft mentioned in answer to 5th interrogatory was drawn during M. S. Cohn's stay in Pine Bluff.

And further deponent sayeth not.

H. H. HUNN.

(Jurat of U. S. commissioner.)

296 *Filing Bill of Exception.*

And thereupon the complainant rested, and this being all the testimony introduced upon the hearing of said cause, beside the pleadings, the same was thereupon submitted to the court, and the court having render its decree herein, and complainants desiring to appeal therefrom, as also from the decrees of the court overruling his petition for rehearing and sustaining the petition for a rehearing of Isaac Cohn, one of the defendants, and leave being given to said complainants to file a bill of exceptions, disclosing the evidence introduced at the hearing of said cause, until the 15th day of July, 1883, and said complainant presenting this his said bill of exceptions within the time so allowed, the same is now, by the court, duly signed and sealed and ordered to be made a part of the record herein.

(Signed) J. C. PARKER,
U. S. District Judge.

297 May Term, 1883.

TUESDAY MORNING, 8½ O'CLOCK, *July 3rd*, 1883.

Court met pursuant to adjournment.

Present: The Honorable Isaac C. Parker, judge of the district court of the United States for the western district of Arkansas.

FRED. KRAMER, Assignee, &c., Complainant,
vs.
ISAAC COHN and M. S. COHN, Defendants.

Order Granting Appeal.

And now, on this day, comes the complainant, Frederick Kramer, as assignee of the estate of Isaac Cohn, a bankrupt, and presents his bill of exceptions herein, which is duly signed, sealed, and ordered to be made a part of the record herein, and prays an appeal to the Supreme Court of the United States from the decree of this court made herein upon the 8th day of May, 1883, in dismissing complainant's bill as to M. S. Cohn, and also its decree made upon the 7th day of June, 1883, in refusing complainant's petition for a rehearing of so much of the decree first made as dismisses this cause as to defendant M. S. Cohn; and also as to the decree of the court made on the 7th day of June, 1883, upon a petition of rehearing of Isaac Cohn, defendant herein, sustaining said petition and dismiss-
297½ ing the complainant's bill as to the said Isaac Cohn, which appeal is hereby granted.

298 The United States of America, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to an appeal granted by the district court of the United States for the western district of Arkansas, wherein Frederick Kramer, as assignee in bankruptcy of Isaac Cohn, a bankrupt, plaintiff in error, and you are defendants in error, to show cause, if any there be, why the original decree and decree upon rehearing rendered against the said plaintiff in error, as in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Isaac C. Parker, judge of the said district court, this 1st day of August, A. D. 1883.

ISAAC C. PARKER,
U. S. Dist. Judge.

[The Seal of the District Court, U. S. A., Fort Smith, Western District of Ark.]

We, M. S. Cohn and Isaac Cohn, defendants in error in the above cause, acknowledge service of this citation, this 12 day of August, 1883.

M. S COHN.
ISAAC COHN.
By CLENDENING & SANDELS,
Their Att'ys.

299 UNITED STATES OF AMERICA, *Western District of Arkansas:*

I, Stephen Wheeler, clerk of the district court of the United States for the western district of Arkansas, hereby certify that the within and foregoing are true and correct copies of record entries and papers in the case therein named as the same appears on file and of record in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Fort Smith, in said district, this —th day of August, A. D. 1883.

STEPHEN WHEELER, *Clerk.*

[The Seal of the District Court, U. S. A., Fort Smith, Western District of Ark.]

Endorsed on cover: W. Arkansas D. C. U. S. No. 281. Frederick Kramer, assignee of Isaac Cohn, a bankrupt, appellant *vs.* Isaac Cohn and M. S. Cohn. Filed September 13th, 1883.

119-355

Office Supreme Court U. S.
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CLERK.

BRIEF FOR APPELLANT.

The Supreme Court of the United States.

OCTOBER TERM, 1885.

No. 281.

FREDERICK KRAMER, ASSIGNEE OF ISAAC COHN, A BANKRUPT, *Appellant*,

vs.

ISAAC COHN AND M. S. COHN.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF ARKANSAS.

MORRIS M. COHN.

UNION PRINTING COMPANY, LITTLE ROCK.

The Supreme Court of the United States.

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BRIEF FOR APPELLANT.

MORRIS M. COHN.

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* See Petition for Rehearing, in same connection. – Print. Rec., 17. And see pages 9. 10, 11, of this brief.

HISTORY OF THE CASE.

1. STATEMENT OF PLEADINGS, PROCEEDINGS AND RECORD ENTRIES.

Frederick Kramer, on September 13, 1879, was, by the United States District Court for the Eastern District of Arkansas, upon the petition of Lehman, Abraham & Co., creditors of Isaac Cohn, bankrupt, appointed assignee of said bankrupt's estate, "to take possession of, and administer upon, any assets which may be found to belong to the estate of said Isaac Cohn, bankrupt," so far as the same had not theretofore been administered upon therein. (Print. Rec., 1.) Subsequently a bill was filed by said assignee in the United States District Court for the Western District of Arkansas, to recover assets which said Isaac Cohn had, it was alleged, fraudulently withheld from his assignee in bankruptcy, and M. S. Cohn was made a co-defendant, because the said assets were incorporated in a business at Fort Smith, alleged to belong to said M. S. Cohn. (Print Rec., 3, 4, 5.) A temporary injunction was granted upon this bill and accompanied with affidavits. (Print. Rec., 2, 3.) To this bill both defendants filed answers. (Print. Rec., 6, 7, 8, 9, 10.) Subsequently an amended bill was filed. (Print. Rec., 13.) The defendants

stood on their answers as filed. Replications to the answers were duly filed. (Print. Rec., 13, 14.) The case was submitted on said pleadings, and upon the testimony that appears in the record.

The original bill is substantially covered by the amended bill. That alleges that said Isaac Cohn had been doing a mercantile business at Pine Bluff, Arkansas, for many years prior to April 24, 1877; that on said day he was adjudged a bankrupt by the United States District Court for the Eastern District of Arkansas; that there were no assets reported in his schedules in bankruptcy to be administered upon; that W. B. Ragland, who had been appointed assignee of his estate, was discharged as such assignee on June 22, 1877; that since then, until September 13, 1879, there was no assignee of said estate; that complainant was, by the order of said district court, appointed the assignee of said bankrupt's estate on the 13th of September, 1879. (Print. Rec., 13, 14.) That a short time before the proceedings in bankruptcy were begun, a fire occurred in the place of business of said defendant, in virtue of which said defendant claimed that his entire stock, books of account, and avails were destroyed; that upon that representation he procured some of his creditors to file a petition in bankruptcy against him, thereby hoping and intending to relieve himself from the payment of his then outstanding indebtedness, which said bankrupt's schedules showed at that time equaled nineteen thousand six hundred and ninety-five dollars. (Print. Rec., 13.) That not exceeding two months before the filing of the complaint in

this cause, certain of the creditors of said bankrupt ascertained that the representations of said bankrupt, to the effect that his entire assets were destroyed, were false; that before the occurrence of said fire the said defendant removed a large quantity of goods to Watson, Arkansas, and at the same time, or shortly afterwards, transmitted to his father in Europe, and placed in divers relatives' hands, whose names are unknown to complainant, in New York City, large sums of money, aggregating over six thousand dollars; that said goods were placed in the hands of A. Boschwitz, at said Watson; that said goods and moneys remained in the hands of said parties until the defendant's discharge in bankruptcy, when he caused them to be transmitted to him, and with them opened a business at Fort Smith, Arkansas, in the name of his co-defendant, M. S. Cohn. (Print. Rec., 13, 14.) That said M. S. Cohn was the clerk and partner of said Isaac Cohn, at Pine Bluff, and was his cousin. (*Ib.*, 14.) That in addition to said assets, said Isaac Cohn took from his store at Pine Bluff his books of account, and by means of same collected a large amount of the accounts therein set forth, even during the pendency of bankrupt proceedings; all of which was also invested in the said business at Fort Smith. That all of said acts were contemplated, connived at, and carried out by and between both of said defendants, for the purpose of defrauding the creditors of said bankrupt, and that the stock at Fort Smith, was the property so kept back together with its material increase. That said Isaac Cohn was at said time carrying on the said business at Fort Smith in the name of his said co-defendant, as he pretended, but

really in no name so far as outward signs indicated; that it was carried on, and consisted of a stock of dry goods, boots, and other merchandise usually kept in a general merchandise business, on the east side of Garrison avenue, in said city, on the corner of the alley, in a stone building, diagonally opposite the Fishback block; that said Isaac Cohn was daily selling of goods forming the stock thereof. That if said M. S. Cohn claimed or had any interest in said business, it was a minor interest, the nature of which complainant is not fully advised; that at most it did not exceed that of a junior partner, with but a nominal interest in the stock and a share of the profits. (Print. Rec., 14.) That neither the complainant nor the creditors of said bankrupt, knew of the fraud aforesaid until a short time before the suit was brought, not exceeding three months. (*Ib.*) That M. S. Cohn did not then reside in Arkansas, but in Missouri. (*Ib.*)

And it prayed for a restraining order and a receiver, that the said Isaac Cohn and M. S. Cohn account for the goods and moneys so kept back, with the increase thereof; that if any interest be found to exist in said M. S. Cohn to said business, that a reference be had to ascertain the same; that on their failure to answer, the whole of said stock of merchandise be vested in complainant; and that proper orders be made for a disposition of the stock. (Print. Rec., 14, 15.)

The answers admit the adjudication of bankruptcy, appointment of assignees as alleged, the relationship of defendants as alleged, and raise no issue upon the matter of limitation, nor the allegation that M. S. Cohn resided in

Missouri. All the allegations of the amended bill respecting fraudulent withholding of assets, and the incorporation of same in the business referred to, are substantially denied. That business, it is claimed in both answers, belongs to M. S. Cohn. (Print. Rec., 7 to 10 inc.)

The replications are the usual ones. (Print. Rec., 12.)

Testimony was taken, and in order that this court should be in no doubt upon that subject, at the suggestion of the judge below, a bill of exceptions thereof was prepared, submitted and signed. (*Ib.*, 20 to 119 inc.) It is treated of at length later on.

A decree was rendered April 21, 1882, in favor of complainant, and against the defendant Isaac Cohn, for five thousand dollars principal, and fifteen hundred dollars interest, and costs; but the bill was dismissed as to the defendant M. S. Cohn. (Print. Rec., 15, 16.)

To this decree petitions for rehearing were duly filed by complainant, and by Isaac Cohn. (Print. Rec., 17, 18.) And the decree aforesaid was suspended until they could be heard, a day being set for the rehearing. (*Ib.*, 16, 17.) And the petition of complainant was overruled, but that of Isaac Cohn was sustained. (*Ib.*, 19.) From which latter decree, and also from the original decree, so far as same was in favor of M. S. Cohn, an appeal to this court was granted to complainant. (*Ib.*, 19.)

The petition of complainant for rehearing avers:

1. That the court below did not give proper and sufficient effect to the statements of a co-conspirator to the scheme of fraud disclosed in the record.

2. That the court below did not sufficiently apply the testimony deduced from indisputable and undisputed circumstances, and the admission of Isaac Cohn, one of the defendants, to the effect that the fund by him fraudulently withheld, was incorporated in the business at Fort Smith, conducted in no one's name, to all outward observation, except Isaac Cohn's himself.

3. That the court did not apply the law relating to the acts and statements of co-conspirators, nor the law declaring the amount and kind of proof connecting parties with a fraudulent disposition of property properly, but gave the defendant, M. S. Cohn, the benefit of such an application as would practically render it impossible, in any case, to sufficiently trace property so fraudulently obtained.

4. That there was no proof to disconnect M. S. Cohn from the fraud, except the statements from the two defendants, and those statements are more than contradicted by the circumstances in the case.

5. That the court below erred in construing the law so as to require complainant to prove the connection of said M. S. Cohn beyond a reasonable doubt; that the court did practically make this application of the law; that the court failed to give the complainant the benefit of such proof as he had made in circumstances and acts (and contradictory statements of both defendants), as reasonably showed M. S. Cohn connected with the fraud alleged in the bill.

6. That the law, under the circumstances, required the defendants to explain away the reasonable and probable case made by the complainant against them in cases of

fraud, because they alone possess the means to give a true and reasonable account of the matter, and failing such, the defendants must be construed to have failed in showing *bona fides*. And the court, in rendering a decree in favor of M. S. Cohn, failed to give complainant the benefit of this principle. (Print. Rec., 17, 18.)

The petition of Isaac Cohn avers that the decree, as to him, should be set aside:

1. Because the court below had no jurisdiction to pronounce such decree.

2. Because said decree, as to him, was contrary to law, and not sustained by sufficient evidence. (*Ib.*, 18.)

The first ground, so alleged, was the ground upon which the court below ultimately dismissed the bill as to Isaac Cohn.

The errors complained of are set forth in the complainant's petition for rehearing, and also embrace the grounds for rehearing set out in the petition of Isaac Cohn.

We present, first, the facts which we claim the testimony discloses, and then the law upon each of the causes of error complained of. That is the best arrangement we can think of, and we trust it will be agreeable to the court.

2. Statement of the Testimony.

The business of the defendant, Isaac Cohn, at Pine Bluff, Arkansas (1), was burned out October 9, 1876. He saved goods and his books from the fire (2), he collected secretly a large amount of money on the accounts and sold the goods. (3.) Preparatory to realizing on the accounts, he struck off the names of those indebted to him and then burned the books. (4.) The goods he saved a party named Washer offered $600 for, but Isaac Cohn wanted $1000. (5.) They were good, saleable goods, and were worth in the market about $1000. (6.) The odds and ends of this stock, that is, the broken part of it, sold at Memphis for $375. (7.) In answer to the third cross-interrogatory, H. Morris, *a witness for defendants*, says, in regard to the sale of the goods at Memphis, as follows:

"I am certain that the transaction took place in March, 1877. I base this statement on the fact that I have found the check which I gave in payment for the goods. And I file a copy of said check herewith as Exhibit "A" to this deposition. *This check is made payable to the order of Harry*

(1.) See depositions of Washer (Print. Rec., 58), and M. S. Cohn (Print. Rec., 69).

(2.) See depositions of Sam. Franklin (*Ib.*, 22, 26), John Bloom (27, 28), B. Washer (59, 60, 61), Harry Cohn (110), H. Morris (111).

(3.) Compare depositions of Washer, Bloom, Franklin, Harry Cohn, Boschwitz and Morris (112, 113).

(4.) See Washer's deposition (Print. Rec., 59).

(5.) See Washer's deposition (*Ib.* 59).

(6.) *Ibid.*

(7.) See depositions of Harry Cohn and H. Morris (109, 110).

Cohn. This, according to the best of my recollection, was done at the request of Mr. Isaac Cohn, himself, for reasons best known to himself. I know this to be the check I paid to Isaac Cohn for these goods." (Print. Rec., 111. Orig. Rec., 275, 276.)

The check is dated March 15, 1877. (8.) Washer shows that he had in hand for Isaac Cohn, between the fire and the time Isaac Cohn left Arkansas for Memphis, $2200; this did not include some collections Isaac Cohn made, nor the amount realized from the sale of the goods. (9.)

In answer to the seventh cross-interrogatory, Harry Cohn, *another witness for defendants*, shows that Isaac Cohn was at Memphis in person when the sale of goods was made. He, Harry Cohn, aided Isaac to make the sale. (10.) How much Isaac Cohn collected and realized is shown not only by Bloom, who says Isaac told him he had $5000, but by matters hereafter referred to. And this was, they tell us, done while Isaac was in Arkansas and Memphis, prior to his going to St. Louis, Missouri. For the purpose of ascertaining when he arrived in St. Louis, we refer to the deposition of M. S. Cohn. (11.) He there states that he (M. S.) arrived in St. Louis, Missouri, on March 18, 1877, and the next day he went around to Lipstadt's store, and

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(8.) *Ib.*, 111.

(9.) See Washer's deposition (59).

(10.) Harry Cohn's deposition. Answer to seventh cross-interrogatory (112).

(11.) When M. S. Cohn was recalled by attorney for defendant, at close of St. Louis set of depositions.

Isaac was then in St. Louis. So that immediately after closing out in Memphis he went to St. Louis. Lipstadt shows that Isaac roomed with him from the date of his arrival till Isaac left St. Louis for Fort Smith. (12.)

Before proceeding further, we desire to offer the following: The testimony of Washer, Bloom, Harry Cohn, Boschwitz and Morris, is that of friends. There is nothing to show that either Washer or Bloom told an untruth, or that they had, while testifying, any interest to injure Isaac Cohn or M. S. Cohn. Isaac Cohn, in his deposition, does not contradict either one of them. Everything unequivocally indicates that Isaac Cohn was a very close, sharp and unscrupulous business man. He was so close that he insisted upon having the last cent of value for the goods which were saved from the fire. If the goods which went to Watson's were all those saved from the fire, then Boschwitz, Harry Cohn and Morris have suppressed some of the facts. But in fact, the goods which went to Memphis went long after they were saved, several months, and they consisted only of odds and ends, as Harry Cohn and Morris show. Harmonizing these, it is doubless true that between the period of the saving of the goods and their arrival in Memphis, some of them were disposed of. This is rendered the more persuasive when it is considered that Isaac Cohn was not very apt to allow the goods so saved to remain undisposed of for several months. Washer collected many of the accounts, they were turned over to him for that purpose, and he shows that he accounted to Isaac

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(12.) See Lipstadt's deposition, taken in St. Louis (76).

Cohn for all that he so collected. Taking the testimony of Washer, Bloom, Harry Cohn and Morris together, we may justly conclude that when Isaac Cohn went to St. Louis he had all of $5000. (13.) Possibly Isaac may say that Bloom and Washer are not now his friends, because they do not aid him in his fraud. But his letters to Washer, and the fact that he dares not deny what Washer and Bloom state, are sufficient to sustain all they say, without reference to those other salient facts which make part of this case. Look through the deposition of Washer, and the impression at once fastens upon the mind of a person confining himself simply to the things he is asked, never volunteering any statement, never exaggerating, never equivocating, telling the simple unvarnished truth.

Out of these facts, so far well established, we may adduce two indisputable propositions, among others:

That Isaac Cohn, after the fire at Pine Bluff, Arkansas, with the restless business activity which is a part of him, was engaged until the very day he left St. Louis, Missouri, in accumulating assets.

And that he was doing that under cover, to use the language of H. Morris, *the witness for defendants*, "for reasons best known to himself!" (14.) Reasons which we must now discuss, and which, as presently shown, we have discovered; not from Isaac or M. S. Cohn directly, but somewhat indirectly.

(13.) See further some remarks *post.*

(14.) Ans. to 3rd x-int., Print. Rec., 111.

What happened in St. Louis, Missouri, during the sojourn of Isaac Cohn there, and subsequently?

Was Isaac Cohn the person to sit down in St. Louis from March to June doing nothing? Did that uneasy spirit, of the many years it was so very active, before and since, all at once stop its workings? That is not probable. The same nervous processes which superinduced mental and consequent physical action the year preceding March 19, 1877, were busy, we may rest assured, during the months which ensued between those two dates. The habits contracted had not ceased to operate for a single moment in the life of Isaac Cohn, for the period over which our inquiry extends. That is according to mathematical certainty. It is founded in the science of mind. But do either Isaac Cohn or M. S. Cohn tell, in so many words, what Isaac did do during that period? What had become of the funds saved by Isaac? What had become of that facility to make money which so conspicuously shines out at Fort Smith, and which shone so undimmed at Pine Bluff? Do the defendants explain it in so many words? They do not offer an explanation. In Judge May's language (cited hereafter), through the "haze of indirection," we see obtained an explanation, reluctantly, unconsciously made manifest. If Isaac Cohn made no money during that period it was because he was engaged *wholly* in something else.

It will be seen presently how he and the other defendant were engaged during that period.

Let it be remembered that when Isaac Cohn burned out he was largely indebted. His indebtedness stated in his schedules in bankruptcy, which was contracted before the date of the fire, was $18,420 merchandise creditors; $650 due for rent; $3010 due to Pine Bluff bankers, contracted in 1876, and $325 due to *Mark S. Cohn, Newport, and S. Brash, Alma., Ark, contracted at Pine Bluff, Arkansas, in 1876*, making a total sum of $22,405. (15.) Isaac Cohn at that time did not have that quantity of assets. He was certainly not easy in circumstances, for of this amount he owed for borrowed money and rent large sums of money, which, had he been easy he would not have owed. Owing for rent alone over $600, it is presumable, until shown by him to the contrary, that he was not then solvent. No explanation is given by him of the amount he received from the banker at Pine Bluff in 1876, the year the fire took place, and the schedule is suspiciously silent as to the date this was contracted. Furthermore, we find that he resorted to M. S. Cohn and Brash for a loan of $325 in 1876, so he must have been in straightened circumstances. Whether it was a loan, or whether it was put there to explain the fact of M. S. Cohn's connection with his business, which Henry Nathan might have explained, cannot, and fortunately need not, be shown by complainant. We need not rely on that. Isaac was adjudged a bankrupt in April, 1877. (16.) He was then in St. Louis, but as the adjudication was made in Little Rock, he (for some reason

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(15.) Print. Rec., 53, 54. (S. Brash appears as S. Buset, in printed record.)

(16.) So stated in amended bill, and not denied.

or other, we have not been able to discover), entered his appearance there, and an adjudication went. He filed a schedule in bankruptcy after April 20, 1877, which, he then being in St. Louis, was prepared there. (17.) In this connection we call attention to the fact that he made oath to his petition for discharge before Stephen Wheeler, clerk, at Fort Smith, Arkansas, on June 28, 1877. (18.) To his schedules in bankruptcy and his petition for discharge, he swore substantially that he surrendered up all his assets, thereby committing willful perjury. And now he and M. S. are engaged bringing witnesses to show that the perjury was not as great as we claim it was, in the persons of Harry Cohn and Morris. For there can be no pretense that Isaac Cohn squandered the money received at Memphis, March 15, 1877, which Harry Cohn and Morris tell about. The perjury was committed for the same reason that the moneys were received by Isaac Cohn under cover, there can be no doubt about that.

We follow for a little while the peregrinations of M. S. Cohn. He returned from Europe (where he went in the spring of 1875), in the fall of 1875 (19), and went to Newport, Arkansas, where he started a store. He claims to have had a store at Alma also, which was established there in July, 1876. (20.) Isaac Cohn, according to his schedules, seems to have thought that Brash owned the Alma busi-

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(17.) See Schedules in Bankruptcy, printed record, 52, 55, 57.

(18.) See Petition for Discharge, *Ib.*, 58.

(19.) See his deposition, *Ib.*, 64.

(20.) See M. S. Cohn's depositions, *Ib.*, 71.

ness. (21.) While Brash was at Alma, he, "M. S." was in Newport, having with him as a clerk, for four or five months, Ben Berger, who received $40 a month, who was replaced by Charlie Less, who began in the summer of 1876 and left in the spring of 1877, and received $15 per month and board. (22.) Sam Brash began at Newport in August, 1877. (23.) The Alma business was given up when Brash moved to Newport, which was coeval with the establishment of the business at Fort Smith. (24.) Brash and one clerk run the Newport business. (25.)

Deferring for a little while our presentation of what more peculiarly relates to the subsequent parts of our presentation of this case, we take up that part of the testimony which discloses M. S. Cohn's arrival in St. Louis. (Before doing so we beg to call the court's attention to the fact that it is only by indirection, only by placing M. S. Cohn in the dark as to the purpose of our interrogation, that we ever succeed in getting the real truth out of him. What is above stated is not given in the way M. S. Cohn stated it; he stated nothing consecutively which would admit of sun-light clearness and comprehended straightforwardness.)

In answer to the second interrogatory propounded to

(21.) We have seen he credits the sum he owes S. Brash. Schedule in bankruptcy.

(22.) See his depositions, *Ib.*, 71; original record, 178.

(23.) *Ib.*, 71; original record, 177.

(24.) Printed record, 71.

(25.) *Ib.*; original record, 177.

him M. S. Cohn said he moved to St. Louis in the spring of 1876. The question and answer are as follows:

"2. How long have you resided in St. Louis?"

"Answer. I moved here in the spring of 1876, in the commencement of the month of March." (*Printed record, 64; original record, 158.*)

The connection is obvious, the question plain, the answer unequivocal. Yet it does not agree with what he says elsewhere. A man ought to know when he removes to St. Louis to reside, but we shall see that M. S. Cohn did not. Early in his examination, as seen, his object seems to be to try to make it appear that he had removed to St. Louis a year before Isaac came, that is, in March 1876 (26); and he also swears that he was on bad terms with Isaac. (27.) This was done in order to have it appear that they did not come there together, about the same time, for some purpose. If other statements and evidence show that he did come there about the same as Isaac, and only thereafter continued to reside in St. Louis permanently, and that he was at said time on good terms with Isaac, then, according to every principle of right reasoning, he must have had some motive for suppressing the fact, and that motive would correspond with his action in stating, at the time he did, the exact period of his arrival in St. Louis, and his interviews with Isaac, at the end of the St. Louis depositions, for others were there who could prove it, if he did not. After his deposition was closed, and after M. Lipstadt was

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(26.) See above.

(27.) *Ib.*, 69; original record, 174.

examined, he was recalled at his own instance, and then stated that he removed to St. Louis in March, 1877. (28.) He says something about moving his family, in March, 1876, to St. Louis and then back again to Newport, and subsequently again moving to St. Louis in March, 1877. (29.) But as his store at Newport was a small one, having but one clerk and himself (30) he could not have found it practicable to reside at St. Louis at that time. He was on good terms with Isaac. Bloom shows, on cross examination by defendant's counsel, in answer to the twenty-third cross interrogatory (31), that Isaac Cohn and M. S. Cohn became reconciled over their differences before M. S. Cohn went to Europe. And he states the circumstances of that reconciliation in a manner which shows that he is not mistaken. Nor do they attempt to deny it. M. S. left for Europe, as seen, in the spring of 1875, and returned in the fall of 1875; then went to Newport. He does not say that he visited Pine Bluff at any time after that. But the schedules filed by Isaac in bankruptcy show a loan of $325 by M. S. to him at Pine Bluff in 1876. (32.) That was after M. S. returned from Europe, so they must have been quite friendly then. And in that remarkable explanation volunteered by him at the close of the St. Louis deposi-

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(28.) *Ib.*, 77; original record, 194, 195.

(29.) *Ib.*

(30.) *Ib.*, 71; original record, 178.

(31.) *Ib.*, 80; original record, 75.

(32.) *Ib.*, 53; Schedule A3.

tions, he shows that they visited and saw each other almost daily after Isaac Cohn's arrival in St. Louis. (33.)

Now, a man has a right to remove to St. Louis when he pleases, but when a person who has a small store at Newport, and only a half interest in a smaller one at Alma (34), which has only been in existence half a year at the time, with a limited capital, removes to St. Louis, people are apt to think it ill-advised. M. S. Cohn, as already stated, and as is shown by the mode of carrying on business at Jones' Landing, was not a stupid man. (35.) He did not come to St. Louis in 1877 for nothing; of course he had a purpose in coming. Men of limited means who have a family (36) at Newport, Arkansas, have a motive in moving to a place like St. Louis, with enlarged expenses. The little earnings of the Newport and Alma business, to say nothing about the presence of only a clerk at Newport, would soon have been consumed at St. Louis. He moved to St. Louis because he could make more money by doing so. We have a right to affirm—because it is most probable, and probabilities control, they weigh with us in all the affairs of life—that men with very limited capital, having a small business in a country town, and an interest in a smaller one at a smaller country town, would find it profitable to remove to St. Louis, only with a view to enlarging

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(33.) *Ib.*, 77; original record, 195.

(34.) *Ib.*, 71,

(35.) *Ib.*, 65, *et seq.*

(36.) He had a family of wife, three children, and self. *Ib.*, 70; original record, 175.

business. And if a man had previously shown much circumspection in business and his other affairs, it is probable that he would not go to St. Louis unless there was something definite arranged, or in view, respecting enlargement of business.

Now, Isaac Cohn came to St. Louis and remained there from and after March 17 or 18, 1877 (37), and M. S. Cohn came about March 18, 1877, to reside permanently. We have seen in what character and how often they met. The result was, as will appear, that goods were bought as early as April, 1877, for a new business at Fort Smith, and Isaac Cohn went to Fort Smith to create it.

Join the fact of the meeting together of these defendants under the circumstances already developed, Isaac Cohn with his thousands secreted, coming from Memphis, active, energetic, pushing, shrewd and unscrupulous, with the fact that M. S. Cohn came with some definite idea of locating at St. Louis, with a view and some reasonable certainty of gaining thereby, with the fact that they came to St. Louis almost the same day, meeting thereafter almost daily; that they both knew of witnesses at Memphis who had sold goods for Isaac; that M. S. tries to keep the fact of that preconcerted meeting hidden, by the mode in which he testifies, and by telling untruths about

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(37.) He was in Pine Bluff March 5, 1877. See note given by him to Bloom. Printed record, 68. He was in Memphis March 15, 1877. See date of check given by H. Morris & Bro. Printed record, 111; original record, 276, and compare with what the witness, Harry Cohn, says. Printed record, 110, original record, 272. On the day M. S. Cohn came to St. Louis, March 18, 1877, he met Isaac Cohn. Printed record, 77.

the friendliness which existed between him and Isaac; join all this with what precedes and succeeds, and what court or jury would not hang a man as high as Haman on less circumstantial evidence?

An interrogatory propounded to M. S. Cohn, mentioned in the text and note, and the answer thereto, are in these words:

"What was said at that time [that is, in 1877, after he met Isaac in St. Louis,] about establishment of business at Fort Smith?" (Printed record 69.)

Of course, we expected him to say nothing. He answered:

"We never spoke then about any business at all, *as we were not on good terms.*"

If they were on good terms, and M. S. had to make it appear they were not, he was obliged to say, for the same purpose, that they had no conversation about a Fort Smith business.

In answer to questions calculated to elicit whether M. S. Cohn knew of or spoke to Isaac Cohn about the bankruptcy of the latter, from his arrival in St. Louis to his departure for Fort Smith, he [M. S.] says he could not recollect whether they [he and Isaac] ever spoke of the bankruptcy; he cannot state when he first learned when Isaac became a bankrupt; he did not remember whether he knew Isaac was a bankrupt when he went to Fort Smith. (38.)

When did he learn of his bankruptcy? Can the court, looking through his deposition, lay its fingers on any testi-

(38.) Printed record, 70.

mony where he does tell? He does not propose telling. That is a matter which lies in his memory, and he can have a treacherous memory if he chooses, and it is nobody's business. The date when he learned that is left indefinite —he "don't remember." (39.) Well, no man remembers that which he is interested to forget, unless he is honest. M. S. Cohn has a good memory in other things; he can remember details of what occurred in 1870, 1871 and 1872, and so on; he ought to be able to remember what occurred in 1872, and preceding years; he ought to be able to remember what occurred in 1877. If one is to take his word for it, he simply said to Isaac Cohn: "Go to Fort Smith and start a business in my name. We will agree about wages when I know what you can do." (40.)

He would have us believe that he sent a man whom he had before charged as a cheat and all that, and with whom he had only just made friends, who was a better business man than he, to Fort Smith, to take charge of his principal business (41), to manage and control the same, while he [M. S.] remained in St. Louis; and Isaac Cohn would do all that without an agreement as to pay. One must be childish to believe that.

Everything points to a preconceived arrangement for business of some kind, which would enable M. S. to remain in St. Louis, and send Isaac to Fort Smith. The busy spirit of Isaac was still working; those nervous processes

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(39.) Printed record, 70. *Ibid.*

(40.) Printed record, 71; original record, 179.

(41.) *Ib.*, 69, 70; original record, 174, 175, 176.

were still active, which before and after shone forth so manifestly. A business is not started in that summary way. They must have been friendly to have M. S. trust Isaac, or to have Isaac trust M. S. with anything. That is consistent with their repeated visits in St. Louis. They talked over the matter.

M. S. would have us believe that when he and Isaac met in St. Louis, they did not speak about those matters which naturally are spoken of between acquaintances, how much more among friends. He would have us believe that the affairs of Isaac, being no longer in business, would not be often referred to and discussed, and that Isaac did not tell him all about it.

They must have talked over the fact that Isaac Cohn had left Pine Bluff and was no longer in business there, they must have talked about the cause thereof, they must thus have ascertained Isaac's bankruptcy, and M. S. Cohn being, according to Isaac's schedules, a creditor of his, must have been notified of such bankruptcy.

M. S. Cohn never mentions the amount so stated to be due, and for aught that appears to the contrary it is mere fiction. Whether true or not, being stated in the schedule, he would be duly notified, according to law; if it is fiction, then it was put there for a purpose, which, outside of themselves, Henry Nathan, M. S. Cohn's friend at Pine Bluff, could probably have thrown some light upon.

We may rest assured that the bankrupt condition of Isaac Cohn was known by M. S. Cohn before the formal adjudication of bankruptcy, and was talked over between

Isaac and M. S.; for the schedules in bankruptcy were prepared in St. Louis, while the defendants were hobnobbing in April, 1877 (42), at the time when goods were actually being purchased for the Fort Smith store.

M. S. Cohn must have had unbounded confidence in Isaac, as he was willing to let him go to Fort Smith to start a business, not in the firm name of M. S. Cohn, as M. S. states (43), but in no name. (44.) M. S. Cohn bought the goods; he was to continue buying goods; the money for the goods was to come to him; Isaac was to manage the business at Fort Smith; the store at Alma was to be given up, and so much as belonged to M. S. Cohn therein was to be removed to Fort Smith (45); it consisted of about seven-nineteenths of the Alma stock, while twelve-nineteenths went to Newport, of which Brash's share was $800. (46.) Brash was to have charge of the Newport business. (47.) That was the understanding at the time, that has been the course of proceeding from the beginning. Ought one to say that they understood differently than they acted? It would seem not—*for acts speak louder than words!*

The very fact that they try to suppress this, to hide it, discolor it, and to falsify about it, leaves the conclusion

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(42.) Printed record, 52.

(43.) Printed record, 69.

(44.) See deposition of Sparks & Breen. *Ib.*, 36, 37.

(45.) *Ib.*, 71.

(46.) Printed record, 71; original record, 178, 179.

(47.) *Ib.*

more certain. Yea, those very things are the indelible marks which must, upon proper analysis, reveal every fraud, for they are inconsistent with anything else.

How well this all harmonizes. It harmonizes with Isaac's transactions at Pine Bluff, Memphis and, as we shall see, in Fort Smith. It harmonizes with the simultaneous advent of the two defendants in St. Louis; it harmonizes with the *suppressio veri* of M. S. and the falsehoods and the bribing of Henry Nathan (presently to be fully noted); it harmonizes with ordinary experience, and with what follows. That is the reason it was found profitable on the part of M. S. Cohn to come to St. Louis, and in the light of this, M. S. had reasons for coming to St. Louis permanently in 1877, and had further motives for prevaricating about it at first. There is no other rational hypothesis, that we can discover. (48.)

M. S. Cohn knew of the bankruptcy, knew of Isaac Cohn's rank perjury therein, when he swore he had turned over everything to his creditors. Did he ever make objection? Did he ever raise his voice to show that Isaac had not sworn truly? He did not. Yet Isaac said in his

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(48.) Here we refer the court to the judge's remarks *in re Bredin vs. Bredin*, 3 *Barr., Penn., p.* 81 *et seq.* There C. J. Gibson called attention to the acts of John Bredin being the mere effects of chance (and the acts were only two or three, not numerous as here), and he remarks that possibly they were, but barely so. Everything happens just as one would expect it according to a given plan or arrangement, and as the parties would have it. And he says: "Thus, it is seen that the character assigned to John was the very one in which he appeared, and that he went through the part at the very time necessary to give the piece success.." And it will be found there that outside of the time John Bredin appeared in the transaction, there was nothing to connect him with a combination or fraud.

schedule he owed M. S. And this was at the very time when M. S. Cohn and Isaac were purchasing goods for a Fort Smith store, and were taking steps looking to its establishment.

In June, 1877, on the twenty-eighth of that month, Isaac Cohn having gone there to establish the business, he went before Stephen Wheeler, commissioner (49), and made oath to a petition for discharge. M. S. Cohn, as a creditor, would be notified of this application. Yet he made no objection to the oath therein taken. He had obvious reasons for not doing so; they have already appeared and will further appear. The same reasons have led M. S. Cohn to deny that he had any knowledge of Isaac's discharge until 1879. (50.)

There are some other matters to be referred to in this connection. Lipstadt shows that Isaac Cohn roomed with him while he was in St. Louis. M. S. Cohn goes there the next day after his arrival, on March 19, 1877. (51.) Why, of all places in St. Louis should he go to Lipstadt's so soon after his arrival? Was it to ascertain whether Isaac had arrived? Was that the place mutually agreed upon? In endeavoring to suppress what is suspicious, M. S. Cohn tries the alternative of all men who have something to conceal. He does not recollect, when it is convenient to forget. We have already made mention of his

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(49.) *Ib.*, 57, 58.

(50.) *Ib.*, 70; original record, 175.

(51.) *Ib.*, 77.

convenient recollection. The reason he did not remember was because he felt the necessity of forgetting. He knew of Isaac's bankruptcy, and what preceded the adjudication, and he knew, according to every reasonable hypothesis, what preceded Isaac's arrival in St. Louis. He manifests no surprise at seeing Isaac there, and everything points to the fact that the defendants met there by arrangement.

To expect that Isaac Cohn's name should be at the mast-head would be too much for common sense. To proclaim him as the proprietor of any store would have been a moral suicide in the eyes of one who intended to defraud. They were well advised in the art of secret partnerships. M. S. Cohn's name was not known in the business carried on by Isaac at Pine Bluff, though he had an interest. (52.) His brother's name did not appear in his business at Pine Bluff. (53.) Brash's name did not appear in connection with the Alma business. So that it was a natural suggestion to leave Isaac Cohn out.

But Isaac, being older than M. S. (54), did not want the firm to appear as M. S. Cohn. He was willing that M. S. should buy, if he had charge of the business, but he was too careful to allow M. S.'s name to appear at Fort Smith. He remembered his own action at Pine Bluff, when his name was at the mast-head. and profited thereby. He could not put up his own name, and did not want M. S.

(52.) *Ib.*, 65.

(53.) *Ib.*, 66; original record, 164.

(54.) *Ib.*, 65; original record, 162.

Cohn's name to appear. Why else does M. S. Cohn's name not appear? If M. S. Cohn had sole control of the matter, does any one believe that he would not have done just what every one does—put his own name on the front of the store as owner? We only allude to these occurrences, not as conclusive, but simply because they give more or less coloring to the case.

Most of the matters relating to the interview between M. S. and Isaac, at St. Louis, were only known to themselves. They had no other witness to it but themselves. Yet they show it by those finger marks which leave their impress and no man can effectually suppress—by marks of perjury, evasion, secretion, contradiction, suppression, subornation and absurdity, which, correlative to the matters sought to be suppressed, point as indeliby thereto as though they had told all themselves. There is no escape from this. Juries would be warranted in finding, and have often found, on less telling evidence, persons guilty of crime, *not because they did not explain, but because they could not explain.*

How do persons act when they wish to remember a transaction? They recall all the circumstances of time and place, especially when they have had plenty of time. A good memory can usually call up the salient circumstances, and can tell the principal acts of the event. If the event is an important one, and not too long transpired, even the smaller details can be remembered. And when M. S. Cohn, who shows a good memory for the matters which occurred in 1872, cannot remember about matters

which occurred in 1877, it must be because he is practising psychological legerdemain.

Isaac had money when the bankruptcy occurred; and this money could only be used availably in a business under cover; former modes of doing business suggested the cover. There could be no other reason for secresy, prevarication, perjury, subornation, and the like. That this money went into the Fort Smith business is an *irresistible* inference. The very reason that this is a fact, is the very reason they would deny it; and it formed one of the prime objects of that Fort Smith business. The *modus operandi* was all conceived in that interest. It was to be a business, the principal business, in which M. S. had an interest. It was to be conducted by Isaac Cohn, while Brash conducted the Newport business. He, Isaac, was to collect moneys, buy cotton, shipping large quantities thereof each season, was to receive goods, keep books, etc. M. S. Cohn was to buy. We will see anon who was to do the paying.

Now we resume the discussion respecting the Newport and Alma business. Of the Alma business, closed out when Brash left for Newport in August, 1877 (55), seven hundred dollars' worth of merchandise went to Fort Smith; the balance went to Newport. In this balance, as has already been noticed, Brash had the larger interest. (56.) In answer to an interrogatory propounded to him

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(55.) Print. Rec., 71.

(56.) *Ib.*

(Print. Rec., 71), M. S. Cohn tries to make it appear that Brash was a clerk at Newport, but his other answers refute that most emphatically. Although he answered that Brash had a two-thirds interest in the goods which went to Newport from Alma (57), he tries to make it appear elsewhere that Brash had no interest in the goods which went from Alma. (58.) Brash received 40 per cent. of the profits of the Alma business (59), and the same amount from the Newport business, after expenses were paid. (60.) We have already seen that the Newport business was a small one, requiring only one clerk beside the manager. Yet M. S. Cohn would have it appear that he could withdraw from that business *forty-five hundred dollars*, within a short time after its establishment, being over 100 per cent. (61) on the amount originally invested. Fifty-one hundred dollars was all he received from Europe, and of this a portion went into the Alma business; $3500 went into the Newport business. (62.) It was about a year and a half, a dull season (63) nearly all the time, while Sparks and Breen show that at Fort Smith, in good sea-

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(57.) *Ib.*

(58.) Print. Rec., 75; Orig. Rec., 189; compare *Ib.*, 71; Orig. Rec., 179.

(59.) Print. Rec., 71.

(60.) *Ib.*, 71.

(61.) Print. Rec., 68; Orig. Rec., 171.

(62.) *Ib.*, Orig. Rec., 170, and *Ib.*, 74; Orig. Rec., 187.

(63.) The Fort Smith business, it will be remembered, was started in June, 1877. Print. Rec., 69; Orig. Rec., 173. At that time, and during the ensuing season, business was dull. (See Breen's dep., Print. Rec., 37; Sam Franklin's dep., *Ib.*, 24.)

sons, average profits per annum did not exceed 25 per cent. (64.) His answer to the interrogatory is:

"I have drawn out above $4500 in cash, which I put into the Fort Smith store."

On re-cross-examination, by his own attorney, he thinks it proper to say, as has been seen, that Brash had an interest in that $4500. He says 20 per cent. But Brash had 40 per cent. of the profits. and as this was profits he must have had 40 per cent. of this $4500, leaving but $2700—for there is no pretense that Brash is interested in the Fort Smith business; on the contrary, it is shown he is not. This $4500 is a gross exaggeration, and of that M. S. could have had only $2700.

In addition to this he shows, or tries to show, that he sent to Fort Smith $700 worth of goods, which represented what he had after the moneys had all come to hand from Europe, for the last moneys came as early as February, 1876, before the Alma business was started. (65.) This $700 worth of goods, the profits of the Alma business, and the profits of the Newport business, was all the capital in the wide world that M. S. Cohn had with which to start that great business at Fort Smith, paying freights, insurance, for fixtures, and numerous other things, besides buying goods.

If Sparks and Breen are right, then even during a good season twenty-five per cent. is the usual average profit on

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(64.) See depositions of Sparks and Breen, Print. Rec., 36, 37.

(65.) *Ib.*, 68; Orig. Rec., 170.

goods. Where the stock is small, the expenses being larger in proportion to the stock and receipts, the profit would be less than where the stock is larger. And of the sales in the Alma business, Brash had forty per cent. (66.) That business was in existence just one year, and the profits could not have been very considerable. M. S. Cohn makes a big guess and says they were not over a thousand dollars. (67.) And of this Brash was entitled to forty per cent., or four hundred dollars. Then at most six hundred dollars profit is what M. S. Cohn had from the Alma business, seven hundred dollars' worth of goods, and the profits of two years' business at Newport. What were these profits of the Newport business? The profits were high at fifty per cent. of $3500, the amount invested. (There is not a merchant in the United States that can make that clear on his capital in two years; yet let us say that is the amount.) This would make $1750. Forty per cent. of $1750 deducted for Brash, would leave the profit coming to M. S. Cohn $1050. So that outside of the $700 of stock coming from Alma, M. S. Cohn had not exceeding $600 representing the profit of the Alma business and $1050 representing the profits of the Newport business. It is more probable, considering the size of the Newport business to-day, that he has not drawn out a cent from it, outside of a living for himself and family. The above calculation is upon the basis of 50 per cent. clear in one year of the Alma business, an obvious, palpable, ridic-

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(66). Print. Rec., 75; Orig. Rec., 189.

(67). *Ib;* Orig. Rec., 190.

ulous exaggeration, which, if true, would lead to this: that in a short time a man would be fabulously wealthy. Here then, at most, was $1650 in cash, and $700 in goods to start the Fort Smith business with, and this upon the theory that M. S. Cohn, during his existence at Newport, did as well as Sparks and Breen did. He does not show any of those lucky events which enabled him to increase his Jones Landing capital enormously, as he says he did, in the time of the Newport and Alma stores. He had no family then, his expenses were very small; he made them smaller by keeping house for himself at Jones Landing. So he ran a farm in connection with his business, and made large money on his cotton.

Let it be remembered, too, that here as elsewhere, M. S. Cohn is continually prevaricating. At one time all this $4500 put in the Fort Smith business, is his; at another time Brash has, to use his own language, "say 20 per cent." interest in this. (68). Elsewhere he says Brash has 40 per cent. of the Newport profits. At another time he states that Brash had an interest to the amount of $800 in the goods which went to Newport from Alma, and in another place he absolutely contradicts this. It is obvious when the matter is read aright, that when he does not see the force of a genuine statement, he will tell the truth, but when he does, he veers around and contradicts himself. To reconcile his testimony in regard to the matter above mentioned with what common sense teaches, and

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(68.) Compare Print. Rec., 68, Orig. Rec., 171; with *Ib*, 75, Orig. Rec., 190.

what Sparks and Breen swear to, and what he himself shows, is to adopt the position taken by us respecting the capital on hand when the Fort Smith business was started. That would be, in addition to the stock, etc., at Newport, $1600 in cash and $700 in goods, in two years on the capital invested and possessed by him, over and above expenses and the profits of Brash. We undertake to say that more than this he did not have. If he did we would like to know where it came from. We would be safe in saying he had not so much. But it is because the defendants see the necessity of increasing the assets of M. S. Cohn that they exaggerate. M. S. Cohn even exaggerates the Jones Landing receipts and prevaricates about them, but that is so far off that it does not materially concern us in this inquiry. But we may concede for him more. He may claim the whole benefit for the two years at Newport with its largest amount, and still his capital will be wholly inadequate to explain the figures we shall now refer to.

Isaac Cohn shows the total capital of the Fort Smith business furnished by M. S. Cohn was between $3500 and $3700. (69.) And Isaac did not under-estimate as we may be well assured. According to our calculation he at least overstated $1200.

Looking over the abstract from the ledger kept at Fort Smith, and made an exhibit to Isaac Cohn's deposition (38 to 52, inc., P. R.), the court will find numerous pages of debits and credits, kept by Isaac, of merchandise pur-

(69.) Print. Rec., 34; Orig. Rec., 84.

chased and moneys paid. These items we will refer to more at length further on. At present we only look at what this abstract shows of goods purchased up to *January* 1, 1878, when the business had not been in existence over a half year, and most of that a dull summer season, and the balance an indifferent winter season. (70.) The fall season of 1878 was a disastrous one. Yet beside paying the large freight bills, preparing for business, and otherwise expending money, doing no business for some time after Isaac arrived at Fort Smith to mention, on the very limited capital the defendants show by their ledger abstract, they purchased *in less than one-half year the sum of*

$23,308.70

worth of goods. And up to the first of May, 1878, purchased auction goods which are spot cash,

$13,076.28.

The auction houses are Heed, Clark & Faulkner, M. Stern & Co., Haggerty, O. J. Lewis & Co., Faulkner, Milner & Co. The affidavits will disclose this fact. Could they do this on a small capital? On $1600 or $3500? We say that is simply impossible. And of this $3500, $700 were Alma stock, leaving $2800. They could not purchase thus largely and maintain themselves, in a good season, on so limited a capital. On a capital of $10,000, they probably could. It is not within the range of human probability that any business man, on a limited capital such as M. S.

(70.) Compare depositions of Sam Franklin and Breen.

Cohn could have had, could have purchased as largely as the Fort Smith store did the first year, to speak nothing of the first half. Up to *June* 19, 1878, the Fort Smith business, according to the abstract, had purchased $35,537.15 worth of goods in less time than one year. Will this court believe that this could successfully be done on so limited a capital? Do these figures lie? And this does not include what M. S. Cohn says he bought from the widow. (71.)

In the latter part of June, 1877, Isaac Cohn came to Fort Smith. (72.) He then looked out for a place. Being a stranger that must have taken him some little time. Then to get the store in readiness took further time, and to receive goods took still further time. We have seen that Brash did not go to Newport till about August, 1877 (73), and that was about the time part of the Alma stock went to Fort Smith. This constituted a portion of the nucleus of the Fort Smith business. So that it was well on in August and perhaps September, 1877, before the Fort Smith business was opened. Now looking at the abstract from the ledger, kept by Isaac Cohn, what is seen? Long before this we find goods to have been purchased, as early as April, 1877, and many goods were purchased prior to June, 1877, not including the Alma or the widow's stock. So that as early as April the Fort Smith business was contemplated. On the first

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(71.) See M. S. Cohn's St. Louis deposition. Print. Rec., 74; Orig. Rec., 188.

(72.) *Ibid.* Print. Rec., 69; Orig. Rec., 174.

(73.) Print. Rec., 71.

page of the abstract there are items of merchandise purchased on April 24, 25, 26, and 30, 1877, and many through May and June, showing that at the time Isaac Cohn filed his schedules in bankruptcy, goods were being purchased for the Fort Smith business, for these were prepared about April 20, 1877. Could anything be more persuasive? On the credit side of the abstract, still worse things appear. Thus, on page 1, an item appears of a freight bill paid on July 1, 1877, and on July 2, 3, and so on, during the months of July and August, remittances appear to have been made. *That was long before moneys were realized or received from the Fort Smith business.* Looked at through the medium of ordinary experience, the new business started at Fort Smith, which did not receive the Alma stock until about August, 1877, and which could not have been in working order until sometime in August (in fact, in the dull season, when merchants long established ordinarily barely make expenses), could not have realized or remitted until late in September, 1877, or October, at best, not considering the fact that the fall and winter was attended with disaster agriculturally and commercially. Now, from July 2, 1877, to September 15, 1877, beside freights, rents, insurance and other expenses, thirty-six drafts appear to have been sent off by Isaac Cohn, according to the account kept by him, and are entitled "draft cash" or "drafts to St. Louis." They aggregate $4586.85, and together with the amounts paid for freights, and so forth, would about reach the amount which Isaac *saved*, if you please. After that date whenever drafts are sent or remittances are made, they are

"drafts to M. S. Cohn," "drafts to M. S. C.," or to parties and business houses with whom the Fort Smith house was dealing, and then sent to M. S. or M. S. C. (74)

(In the latter case, reference being had to the book, it will be found the "to M. S.," or "to M. S. C." (74), was an interpolation, an afterthought. Isaac Cohn doubtless saw that these entries might be injurious to the defendants, so he interpolated, and stopped making those remittances in that form, in February, 1880, about the time depositions in St. Louis were notified to be taken, and a comparatively short time before his own were taken.)

It was the scheme to add Isaac Cohn's capital after the business was inaugurated. That is the explanation, and to the end that the matter might be fully covered up, Isaac was to remit in small installments. How uniform these installments are—just as though stereotyped. See how they are distinguished by the entries. And most of all, see that they were made when the Fort Smith business could not have been yielding anything. Why should the entries after September 15, 1877, have been different. There must have been some object in view. There is the barest probability that it was chance (as Gibson, C. J., said), but it fits so harmoniously with other facts and circumstances in the chain of events, as to leave the mind

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(74.) Isaac Cohn's deposition, Exhibit "A." Right-hand column. Print. Rec., 38 to 52 inc. Isaac Cohn has it (erroneously) in the reverse order. Print. Rec., 34.

From July 12, 1877, to September 15, 1877, thirty-six drafts appear entered as "drafts to St. Louis."

From September 15, 1877, to June 15, 1880, one hundred and ninety drafts

skeptical as to its being chance, especially as the defendants do not attempt to explain the same; *and upon them lies the*

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appear entered as "drafts to M. S. Cohn, drafts to M. S. C., [direct] or from parties named to M. S. C."

INDIRECT.

August 30, 1878, shows draft, J. S. Goss to Senter Bros., to M. S. C.	$200 00
January 15, 1879, shows draft on I. M. Wiener & Co. (Cohn's cotton house), to pay Hill, Fontaine & Co.	73 31
July 31, 1879, shows cash draft to J. Meyberg & Co., to M. S. C.	50 00
July 18, 1879, shows cash to M. S. C. and G. C. & Bro.	222 79
September 26, 1879, shows Dunham Mfg. Co., to M. S. C.	47 15
September 2, 1879, shows N. Goldsmith & Co.	300 00
December 2, 1879, shows cash draft to Hamilton, Brown & Co., to M. S. C	100 00
December 8, 1879, shows cash draft to Chase & Cabot, to M. S. C.	655 44
December 6, 1879, shows cash to M. S., Rice, Stix & Co.	25 00
December 15, 1879, shows N. Goldsmith & Co., to M. S. C.	256 25
December 16, 1879, shows N. Goldsmith & Co., to M. S. C.	225 37
January 8, 1880, shows draft to Ignatz & Spitzer, to M. S. C.	300 00
January 7, 1480, shows Tatum draft to Fisher Bros., to S. M. C.	88 68
January 17, 1880, shows cash by Sternberg to Adler, Goldman & Co., to M. S. C	100 00
February 7, 1880, shows Chase & Cabot, to M. S. C.	50 00

DIRECT.

*June 21, 1877, J. Baum, discount	$ 20 00
November 20, 1877, paid draft M. Stern & Co.	700 00
November 22, 1877, paid draft Chase & Cabot	220 00
November 19, 1877, paid draft Lyons & Son	200 00
November 15, 1877, discount on Chase & Cabot	10 34
December 1, 1877, Lyons & Son, cash	200 05
December 4, 1877, Frank & Sons, cash	13 70
December 5, 1877, M. Lipstadt & Bro., cash	100 00
December 8, 1877, discounts Cleyberg & Einstein acct.	16 60
January 19, 1878, B. Loewenstein & Bro., draft	182 95
March 16, 1878, Meyer Bros.	50 00
December 5, 1878, Peppenheimer, draft	100 00
December 16, same, draft	250 00
November 1, 1879, I. M. Wiener & Co., draft	70 00
November 1, 1879, same, draft	24 00

*No purchase is entered on said exhibit, save one of July 2, 1877 (being eleven days after this discount is allowed).

explanation. This is not a conclusive circumstance, but it is certainly a fact that has fitness, coming where and as it does.

In his answer to the 117th interrogatory propounded to him in St. Louis (75), M. S. Cohn states, that the reason no account of moneys paid out is kept at Fort Smith or Newport, is that the parties in charge there have nothing to do with the indebtedness, and "it is not their business to know." It having been previously affirmed by him that no account of the moneys so paid was kept at those places.

As we were not pursuing the Newport business we did not go into special inquiry about it, especially as the case had already proved sufficiently expensive. But that this statement is false, even respecting that business, admits of no doubt; for, as already seen, according to his own statement, Brash was largely interested in the business, had capital therein, and to say under those circumstances that Brash had no business to know and did not know the moneys paid out, is simply a barefaced falsehood. Brash would have had to submit the moneys received from the Newport business, and would be very careful to know how and why he was remitting, and that the proper amount was properly paid out and credited. That is the way, and the only way, his share of the profits could be, or ever is ascertained. But this statement of M. S. Cohn agrees with his attempt to make it appear in one place that Brash had no interest in the Alma goods.

(75.) Print. Rec., 72.

The untruth of this statement is made further manifest, as are all the statements of M. S. Cohn, when he tries to make it appear that he paid the bills, and alone kept the account thereof. For running down the abstract kept by Isaac Cohn, of which a partial extract appears in a note, *ante*, it will be found that until Isaac Cohn's attention was attracted to the danger, in February, 1880, Isaac Cohn made remittances, sometimes to creditors direct, and sometimes to them care of M. S. C. (unless the latter is a mere subsequent interpolation, which is most probable.) The abstract shows that not only Isaac kept an account of merchandise purchased, but also of remittances to creditors, up to the time, and some little time after this suit was instituted. He also kept an account of discounts as early as July 2, 1877. *After February, 1880, the cotton account forms the means of payment.* Isaac Cohn saw the danger, and thus sought to ward off suspicion.

Whatever was done was known to Isaac Cohn fully as well as to M. S. Cohn. Receipts and remittances were alike known to both. And the fact that this is attempted to be suppressed, goes to show again that the fact itself was regarded as damaging.

Reference being again made to the abstract, it will be found that April items appear among May items, May items among June items, and so on. Showing that the keeping of this account was not regular.

Isaac, in his answer to the twenty-ninth interrogatory propounded to him, shows that he had one clerk at $50 per month. One clerk received at first $60 a month, or

$720 per year, which was increased to $800 per year the second year, and $900 per year the third year. Another one received $60 per month, another one $25, besides several other clerks. The porter received at first $20, which was subsequently increased to $25 per month. (76.)

The business increased during the two and one-half years Isaac Cohn hired the clerks and paid the salaries. He, as business increased, raised the salaries of some of the clerks from year to year. Also, he raised the porter's salary.

Now, the defendants say Isaac Cohn not only managed that Fort Smith business, attending to its manifold details, selling goods, buying cotton, collecting, hiring and paying clerks, paying rent and all that, but kept the books beside, which would be attended with increasing difficulty. He did all this so successfully that the business prospered as well as any business at Fort Smith. Which was saying all that could or was required to be said. In fact M. S. Cohn, in a moment of forgetfulness, thinking it would do no harm, shows his consciousness of Isaac's ability, for he says he, Isaac, does "the work of three men." (77.) Yet Isaac, during all this period, asked for no increase of salary! How magnanimous it was to sacrifice his own interest in this way when, if the defendant's showing be true, he was capable of making 100 per cent. per annum on capital invested, and had no reason not to go in business for himself. How very considerate it was for Isaac

(76.) Printed record, 35.

(77.) *Ib.*, 71; original record, 179.

Cohn to thus sacrifice years for his dear *second* cousin, "M. S.," (whom, as M. S. Cohn at one time tries to make us believe, he was at enmity with but a short time before). And how little this accords with what they say about Isaac drawing out his salary regularly. (78.) And all this when Brash, at Newport, who was vastly inferior to Isaac, (79) (M. S. says, "there is no comparison between Brash and Isaac Cohn, as Isaac Cohn is a thorough business man,") was receiving 40 per cent. of the profits, which, if we are to believe M. S., would, even at Newport, largely exceed Isaac's salary; and when his brother at Indian Bay receives the same profit (80), and Brash received the same at Alma. Indeed, this is all so very kind of Isaac Cohn (especially not to ask for the increase of salary), that it deserves to be commented upon. There is something so unique and eminently suspicious about this phase of Isaac Cohn's character that one is apt, if it were true, to set him down as a *simpleton*.

But he is no simpleton. M. S. Cohn tells us so in almost so many words when he thinks it will do no harm. And Isaac tells us so by those acts and transactions of his which stamp him as a master in the arts of trickery, bargaining and manipulating. He receives as much as Brash of the profits, and more; is fully as much interested as M. S. Cohn. That accounts for Isaac Cohn's zeal; that accounts for the business at Fort Smith, and all

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(78.) *Ib.*

(79.) *Ib.*, 117; original record, 289.

(80.) Printed record, 117.

the irregularities we note; it accounts for the falsehoods of M. S. Cohn and Isaac Cohn; it accounts for Isaac's having control at Fort Smith; it accounts for there being no name in front of the building; it accounts for M. S. Cohn's rare visits to Fort Smith; it stands in accord with the increase of salary of clerks, and no other explanation does. If he has a share in that business his means are in it. There is no other place on earth for them to be. Washer and Bloom believe it; M. S. Cohn and Isaac Cohn by their acts unequivocally tell it; that explains the whole scheme of the Fort Smith business, the perjury attending the schedule, the mysterious entries there, the falsehoods of M. S., the suborning of Nathan. *And, finally Isaac tells it to Washer. Washer says so.* (81.) (*Isaac nor M. S. do not contradict him.*) The money, which the defendants now disclose Isaac had just before going to St. Louis, and received secretly under cover, is thus accounted for; the letters of Isaac Cohn to get Washer to tell falsehoods are thus accounted for; the silence of the defendants against statements of Washer is thus more convincing, and the statements of Bloom are brought into bolder relief.

Will this court say that this strong chain of events was accidental; that we have not, through the haze of indirection we were compelled to travel, created by the defendants, probably, if not demonstratively, made our case?

There are some things still to be referred to. The swift witness, Harrington, tries to give an explanation of the

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(81.) Printed record, 58, 59, 60.

increase at Fort Smith. While it is not very important, we will still refer to it, to show how he has magnified. He would have us believe that auction goods in a regular business pay tremendously, which would show why the Fort Smith business increased in size rapidly. But that would not fulfill the requirements of defendants. Both Sparks and Breen show that this profit is exaggerated, and they handled job lots and auction goods. The average profit on capital was not over 25 per cent. per annum.

The abstract already referred to, compared with Harrington's statement of the names of the auction houses from whom goods were received, shows that during the latter year or year and a half of the Fort Smith business, few auction goods were purchased. Now, if they were so profitable, it is reasonable to suppose that when the business was larger and more able to pay, more instead of fewer goods would be bought. The defendants cannot thus attempt to make their explanation. To assume as they would have us do is to assume that men will voluntarily, without any corresponding benefit, give up larger profits. No business man ever does that we know, and it is not too much to say that the defendants never did. It is experience that auction goods are mainly good for filling in occasionally. Sometimes they pay and sometimes they do not pay. Upon the whole it is a subject of some doubt whether in the average they pay as well as goods bought regularly, because they usually consist of remnants of stocks and broken assortments. This accords with what not only Sparks and Breen say, but also with what the defendants did.

The appellees, counsel may attempt to criticise our explanation of the entries shown by the abstract of the remittances, and may try to explain the same by saying they were from the Alma business. But that could not be true, for the capital of the Alma business (goods and profits) is fully accounted for, and more than accounted for.

The fact of larger profits on auction goods than others may then be used to explain the remittances. (82.) But, to say nothing of many of these remittances being made before the Fort Smith business was opened, the large profits on auction goods are a myth, and, in addition, they will not come up to the requirements of the defendants. They will not account for a purchase of over $30,000 worth of goods, beside those already on hand, in less than a year, (the first two or three months of which were the dull summer season, and the balance an indifferent fall and spring season), on a very limited capital.

In reference to the testimony of Henry Nathan, about which we have already spoken, we again call attention to the fact that a draft was given by M. S. Cohn, payable to Nathan's order, without definite date (83), drawn on the commission house of I. M. Wiener & Co., to whom the Fort Smith business was shipping cotton. It was given at the time Nathan's deposition was being taken, and while M. S. Cohn was at Pine Bluff. No indebtedness was then due him by M. S. Cohn, and the draft is trans-

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(82.) We have not referred to their doing a wholesale business. See M. S. Cohn's Fort Smith deposition. Printed record, 117.

(83.) See deposition of Hunn, and copy of draft. *Ib.*, 118, *seq.*

ferred to one Feis, by whom it was cashed at bank. M. S. Cohn admits Henry Nathan's friendship, and Nathan shows that he was familiar with M. S. Cohn's transactions. What Nathan swore to could be shown by other witnesses except a few small, unimportant matters. What other conclusion is there than that Henry Nathan knew something which had to be concealed? And what was that but something connected with the Pine Bluff and the Fort Smith transactions? There is something dark about the Pine Bluff business which Henry Nathan could have told, as sure as it is that he was bribed for a purpose. He never appears to have been at Fort Smith. At Pine Bluff the thing occurred which he knew about, and it is in some way connected with that entry to M. S. Cohn and Brash's credit in Isaac's schedules.

Thought flows on; it does not stop with one act, but many acts testify to its activity. Sometimes, as in this case, it is the thoughts and acts of more persons than one which are to be considered. The thought may form a belief, beget a confidence, or find expression in acts, manifested by spoken or written utterances, or by the establishment of mercantile institutions. When something wrong is intended, those privy to it take measures to conceal it, if there is danger of detection; and according to their game and acumen will be the perfection of means adopted. But hide it as we may wish to, nature has so provided that we can discover the real tenor of the thought by looking carefully, however much the outward aspects may have been guarded. Therefore, if sufficient care is taken in the

examination of witnesses, fraud cannot generally be successfully hidden, if the witnesses thereto are alive. The searching and cold process of analysis is most often a match for the shrewdest frauds. Supply the acts done, whether by word of mouth or otherwise, with the thought that prompted them, and surround them with those natural incidents by which they are inevitably accompanied and controlled, and thus ascertain the real facts. That is the way we have arrived at the real facts of this case. A process which guides us in logic, in mathematics, and astronomy. Can any person come closer to demonstration?

In the light of that process we have learned to know that the defendants would not hesitate to falsify if it became profitable; that they would endeavor to get others to do likewise; that they would magnify, and aid each other in a scheme where all this would be required. We have learned that from and after the fire at Pine Bluff (God alone and these defendants and Henry Nathan know what happened before that), a large amount of assets was accumulated, which was immediately succeeded by the advent of both defendants in St. Louis, Missouri. We have seen that both defendants were energetic and even careful business men, not disposed knowingly to throw aught away; that according to this they came to St. Louis for a purpose, and that this purpose had to be hid. That to hide it they deny things which are true, that they prevaricate, and that they contradict themselves; that the scheme was developed by the purchase of goods in April, May, June, and July, of 1877; that these were followed by the establishment of the Fort Smith business; that simultaneously

therewith the Alma business was closed up, Brash going to Newport, M. S. staying in St. Louis, and Isaac going to Fort Smith; that upon no possible hypothesis could Isaac have gone to Fort Smith, as defendants would have us believe; and that the goods purchased for that business in the first nine months are out of all accord with any capital M. S. Cohn could lay claim to; that Isaac did have funds unemployed up to the time he came to St. Louis, and that thereafter nothing is said by either of defendants about them; that the schedule in bankruptcy filed by Isaac Cohn and the petition for Isaac's discharge were false; that M. S. Cohn knew of their existence, but felt the necessity of denying, which assumes he knew what was behind the same; that the Fort Smith business could not have been placed in Isaac Cohn's hands upon the defendant's theory; that there is no other explanation than that Isaac Cohn's funds went into that business. This is not only proven by their acts of suppression, perjury, evasion (by the thousand and one tricks by which the real facts are sought to be covered up), and sustained by the well-founded consciousness of friends and neighboring business men, and the belief of men who would not act from improper motives; it is also sustained by another circumstance exceedingly telling. While we were examining one of the defendants, their counsel instructed his witness, practically, to deny that there was a firm at Fort Smith, and to say that M. S. Cohn was the sole proprietor. It was after the twelfth interrogatory to Isaac Cohn propounded at Fort Fort Smith. (84.) The counsel would doubtless say that

(84.) Printed record, 33; original record, 83.

he wished to guard against an attempt on our part to constantly use the word "firm." But surely he was not so stupid or ignorant as to believe that this could benefit us; nor could he think we intended to avail ourselves of any such contemptible quibble. The word "firm" had been previously used and no objection had been made. No, it was an expression prompted by fear of the truth. *The same conclusion is sustained by Isaac Cohn's declarations to Washer, which neither of the defendants dare deny.* The funds remitted before the business began at Fort Smith; the anxious endeavors on the part of M. S. Cohn, Isaac, and Harrington, to make the assets of M. S. Cohn large; the attempt to lessen the assets of Brash; to keep from sight the real period of locating at St. Louis; the inconsistencies respecting what was done at St. Louis, between Isaac and M. S. Cohn; the falsehoods about the bankruptcy; the disposition of funds from Fort Smith; the absurdity of the defendants position as to the mode in which Isaac Cohn went to Fort Smith and continued to work there; the fact that they now do not attempt to deny that Isaac saved funds, but by witnesses in Memphis seek to make the same small; all confirm the facts we state.

Upon a less conclusive induction science has been safely builded, and nations are successfully governed, and men succeed in business.

Take a *reductio ad absurdum*, and you take the defendants' position; you land yourself thereby in contradiction, evasion, suppression, falsehood, subornation and perjury. They ought to, and would if they dared, explain what

became of the money Isaac undoubtedly had, but they dared not; they dared not for the same reason that for two and a half years they had done acts which could not see the light. Isaac Cohn had sworn falsely when he said he had no assets in bankruptcy, and M. S. Cohn was an accomplice in the crime.

The counsel on both sides of this case well knew, must have known, that the principal persons, through whom daylight could be shed on the substantial matters of the case, were the defendants themselves. The defendants' counsel had all the advantage, and when he instructed his client, then being examined by us, there must have been some strong motive prompting him.

Read in the light of the principles declared in the text books, and the decisions hereafter cited, Isaac Cohn's means, aggregating five thousand dollars, are in the business at Fort Smith; they are means which, with the increase, he has wilfully kept from his assignee and the creditors, which the complainant is entitled to recover. (85.) In any event, the fund kept back by him was $3,200, plus the goods saved and some collections he made himself. (86.) He does not deny this. This would aggregate $3,000 to $2,500, mingled with the fund of the Fort Smith store, not counting what Isaac Cohn may have made in St. Louis, while there prior to bankruptcy. (87.)

(85.) See transcript showing the appointment of Kramer. Printed record, 1.

(86.) See Washer's deposition. *Ib.*, 58 *seq.*

(87.) A number of affidavits, introduced by defendants, were allowed to go in proof (Print. Rec., 81 to 98 inc.); they are the affidavits of business

ERRORS.

1. The six grounds set out in complainant's petition for a re-hearing, state substantially that when the court below decreed Isaac Cohn to have withheld five thousand dollars of assets from the assignee, and dismissed the bill as to M. S. Cohn, it separated what was in reason inseparable, and failed to give effect to well established doctrines relating to the statements of co-conspirators. It also ignored a salutary principle which, under the circumstances disclosed by the testimony, put the *onus* of explanation on M. S. Cohn, and held him bound by all that was fairly deducible from the whole case, when not satisfactorily explained away by him.

(A.) While some courts have not sufficiently done so, this court has taken a decided stand adverse to anything that savors of fraud. Hence the expressions of the judges of this court, upon the doctrine of possession as being evidence of fraud, has always been the extreme one.

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men at St. Louis, to the effect that when goods were bought they were purchased in the name of M. S. Cohn. But where the money came from which paid for the goods it is admitted the affiants do not know (See Agreement, Print. Rec., 81, 82.) The other testimony introduced by defendants, uncommented upon, we submit is not material.

See—

Hamilton v. Russell, 1 Cr., 309.

Moore v. Ringgold, 3 Cr. C. C., 434.

Hamilton v. Franklin, 4 Ib., 729.

Meeker v. Wilson, 1 Gall., 419, 423.

A review of the cases where fraud was charged, will also show that the most liberal position has been taken for its suppression. Thus in *Lukins v. Aird, 6 Wall., 78*, this court reversed Ringo, J., sitting as judge at Fort Smith, holding against him that it was fraud, although there the evidence seemed meager to the judge below to sustain such a position—a judge quite strong in the suppression of fraud. As early as *United States v. Armistead, 15 Peters, p. 518*, it was held that fraud would vitiate a treaty. In this manner is indicated what position a reasonable mind should take of evidence such as exists in this case. See *infra*.

When we asked the lower court to decide against the defendants, we went no further than this court has repeatedly gone.

See—

Clements v. Moore, 6 Wall., 299.

Kempner v. Churchill, 8 Wall., 362.

Rea v. Missouri, 17 Wall., 532.

Humes v. Scruggs, 94 U. S.. 23.

Martin v. Smith, 1 Dill., 85.

(B.) *In re Gardner v. Preston, 2 Day., 205; 2 Am. Dec., 91, 93*, the court say:

"Direct evidence, for the most part, is neither to be required nor expected; and this remark is of peculiar importance, in reference to the proof of fraud. 'The nature of the thing itself, which is generally carried on in a secret and clandestine manner, does not admit of positive evidence; and, therefore, if no proof but that of actual fraud were allowed in such cases, much mischief and villainy would ensue and pass with impunity. Circumstantial evidence is all that can be expected, and, indeed, all that is necessary to substantiate such a charge.' Nor is it requisite that the circumstantial evidence should have a direct relation to the immediate subject of inquiry; *much less, that the inference drawn from the circumstances proved should be absolutely certain and necessary.* It is sufficient if the evidence be such as to produce a fair and reasonable presumption of the facts in issue; and if it has that tendency it ought to be received."

See—

Rogers v. Hall, 4 Watts, 361.

Fraud is a thing hard to seize upon; its aspects are multiform. Sometimes it covers a period of many years; sometimes the fraud is carried on under the protecting cover of a father, or a wife, or a son, or a brother or brother-in-law, a cousin, and so on. Sometimes the transactions are so covered up that it requires considerable analysis to get at the bottom of the true state of facts. Sometimes a fact here and there absolutely suspicious and

inconsistent with any theory of honesty, startles the mind and sets the inquirer into a profounder examination. Sometimes it is a slip, or a combination of unusual events more or less separable in time. A combination of two or more is generally implied, and very often a relative of some kind is used as most reliable. It is rare that another name is not required to be used.

Here some of all the features above stated will be found. Here another name was used, a combination was formed under circumstances and for purposes that had principally fraud in view. *If there was a combination in this case, then the fact of fraud follows as a logical sequence.*

Nor will we be held bound by all that the defendants choose to swear to.

Am. Law Review, January, 1877, 261, seq., article by Judge J. Wilder May.

There is no positive rule to be laid down, by which can be measured the extent to which, in all cases, a man can or ought to be believed. Sometimes a man is mistaken. Sometimes he is carried away by prejudice, and so distorts. Sometimes he has motives of kinship, or arising from self-interest, prompting the statements highly colored or to acts of *suppressio veri.* It has been truthfully said, and it is based in the soundest experience, that men who commit, or aid in committing fraud, will swear falsely to hide the fraud; just as criminals will lie to shield themselves. "No man willingly furnishes the evidence of his

own turpitude." (*) But frequently fraud is a fact which, as it does not lie open so that you can put your finger on it, can only be proved by going into the haunts where it hides, in the den of its own infamy. Then, if we do not wish to abide by the fraud, if we wish to lift our voices against it and invoke the benign protection of the courts and the law, we must be compelled, by sheer force of circumstances beyond our choice or control, to put those persons to the test who have themselves committed the fraud, to examine them as being alone able to throw a proper light on the real transactions—persons who are interested most strongly to hide the same. And this is not the exceptional case, as is evidenced by the fact that it has become so general as to draw from Congress, in the bankrupt act, a clause providing for the examination of the bankrupt and others. Besides which frauds of the worst description are generally those most deeply planned and most covertly carried out. So, if courts should hold us to all the witnesses say, if courts should say to us—defrauded creditors—"you must abide by this testimony," not only the worst kind of fraud, in the most numerous class of cases, must go forth successful, but we are subjected, in most if not all the cases, to the ridiculous conclusion of abiding by inconsistencies, absurdities, contradictions, obvious evasions, suppression and falsehood. That the courts have not, cannot, and never will hold; they will always look at the reason, and judge according to reason.

(*) Bump. Fraud. Conv. (2d ed.), 581.

The rule applicable where a few thousands only are at stake being equivalent to cases where millions may be at stake, the decision in one being the precedent in another case, courts hold that the inconsistencies, the falsehoods, the *suppressio veri*, of witnesses, will all be considered; their interests, their motives, their acts will be weighed in the light of all the testimony, and that theory will be adopted which is consistent with truth.

See—

Chandler v. Attica, 22 Fed. Rep., p. 627.

The statements of Isaac Cohn should have been treated, not merely as admissible, but also as evidence of the fact of conspiracy itself. When the surrounding circumstances seem to indicate that turpitude of some kind exists, the disposition of courts seems to be to allow statements of co-conspirators to go in to prove the fact of conspiracy, as well as its purpose.

In re Chicago, Rock Island R. R. Co. v. Collins, 56 Ill., 212, there was no outside testimony connecting Collins with one Duggan, to warrant anything like a conclusion of combination, except presumption, yet there the court allowed a letter of Duggan to go in testimony. In that case it was claimed by the railroad company, in an action against it to recover the value of a trunk and its contents (alleged to have belonged to the plaintiff, a passenger, and lost by the company), that the trunk belonged to a third person, who took it away from the depot without the knowledge of the agent of the company, and then procured plaintiff to bring suit for its recovery. The evi-

dence was very meagre; in fact, only by supplying largely could it be regarded as sufficient to prove such facts. Yet it was held that there was sufficient evidence of a community of interest and design between plaintiff and such third person, to allow a letter written by the latter to a stranger to the transaction, *going to show conspiracy*, to go in evidence in the case as testimony against the plaintiff.

In re Deakers v. Temple et al., 41 Penn. St. (5 Wright), p. 235, the case was:

Martin Connolly and wife had a dry goods store on Wylie street, in Pittsburg, for several years prior to August 23, 1860. On that day plaintiff alleged he purchased from her the entire stock of goods for $1800, secured by negotiable notes; that he went into possession on the forenoon of that day, and had continued in possession ever since. On the trial the plaintiff gave in evidence the following paper:

"MR. RICHARD DEAKERS:

"Bought of Mary Connolly the entire stock of dry goods and merchandise generally, contained in the house numbered 79, Wylie street, Pittsburg, together with the good-will of the stand, and all the store-fixtures contained therein, for the sum of $1800.

"PITTSBURG, August 23, 1860.

"Received payment,

"MARY CONNOLLY.

"I hereby approve of, and agree to, the above.

"MARTIN CONNOLLY.

"Witness present: JOHN KELLY."

He also gave evidence tending to prove that said paper was executed and delivered, and the possession of the goods and store delivered to him before 1 o'clock p.m. of August 23, 1860; and also that he executed and delivered to Mary Connolly, the vendor, his three negotiable promissory notes—at six, twelve and eighteen months respectively for $600 each—the last two bearing interest. Plaintiff also gave in evidence an inventory and appraisement of the goods, made by respectable and disinterested merchants of the city of Pittsburg, showing that the consideration ($1800) paid by Deakers to Mary Connolly was a fair and just price for the store. He also proved by several witnesses that, from the time of the sale till the present time, he had absolute and exclusive possession of the store in controversy.

The defendants showed a large number of judgments and executions against Connolly, one on the 23d August and others on the 25th of August and later, and called

Samuel B. Cluley, deputy sheriff, who testified that he called at the store on August 27, 1860, and made the levy; that Martin Connolly, his wife and daughter, and others, were in the store. Mr. Deakers at that time was not in the store. That he, Cluley, told Connolly that he had two executions against him, and had been directed to levy on the store; and then proposed to prove what Martin Connolly said to the witness in reply.

Here, it will be observed, was no evidence showing that Deakers knew of creditors existing, or that he was not amply able to pay for the notes, nor any other evidence of

complication, save that Connolly, wife and daughter, beside others, were in the store, and Deakers was not, when the deputy sheriff called. In fact, Deakers had shown, or gave evidence showing, that he had absolute and exclusive possession of the store. According to the hypothesis, Deakers might have been there at other times, and Connolly, wife and daughter may have been there as persons most cognizant with the business. If presumption could operate, these presumptions would have been as allowable according to theoretical reasoning, as the contrary presumptions. Yet the court held (through Woodward, J., who delivered the opinion), as follows:

"The case involved a question of fraudulent transfer of a stock of goods. Connolly and wife, who had been in the possession of a store, which was carried on in the wife's name, completed a sale of the goods to Deakers, for his promissory notes, a few hours before the execution of Temple & Barker came into the sheriff's hands. When the deputy sheriff called to make a levy, he found Connolly and wife both in the store, and with Connolly he had some conversation, which he was permitted to prove on the trial. The admission of Connolly's declarations is the first error assigned,

"They were evidence; first, because he had joined his wife in making the sale, and was thus one of the vendors still in possession, under whom Deakers claimed; and next, because the circumstances afforded some evidence of concert and collusion, between Deakers and Connolly and wife, to defraud the creditors of the latter, and, therefore, the declarations of one were evidence against the other."

The declaration of Connolly was that which threw light on the transaction, and obviously it effectuated justice to admit it. What evidence there was in this case of collusion between Deakers, Connolly and wife, that is not far more strongly presented in this case, we are at a loss to understand. Was there any positive evidence of collusion? Was there anything but presumption outside of Connolly's declaration? Was there anything else in the whole case but that kind of inference which man's experience and common sense call up, impelling him to aid in the suppression of fraud, by allowing matters explanatory to go in, upon the theory that technical rules must be applied with that moderation and sense, which, at the same time that they are consonant to justice, give sufficient practical effect to them, and suppress fraud?

See also;

Rea v. Missouri, 17 Wall., 532, 544.

MacKinley v. McGregor, 3 Wharton, 397.

Gibbs v. Neely, 7 Watts., 305.

Bredin v. Bredin, 3 Barr., 81.

Reitenbach v. Reitenbach, 1 Rawle., 362; 18 Am. Dec., 638, 640.

Philpot v. Taylor, 75 Ill., 309.

Helser v. McGrath, 58 Penn. St., 458.

Conger v. McNeal, 74 Ib., 112;

Place v. Minister, 65 N. Y., 89.

Bigelow on Fraud, pp. 483, 484.

Wharton on Evidence, § 1205.

The statements of Isaac Cohn should have had full effect given to them for the further reason that they were made by a party in possession of property, as explanatory of such possession.

Deakers v. Temple, supra.

A strong ground of complaint, and one which it seems to us conclusively shows the decree in favor of M. S. Cohn to be erroneous, beside what has already been said, is this: That the court below failed to give us the benefit of the principle, *that under the circumstances disclosed by the testimony, M. S. Cohn should be held bound by all that is fairly deducible from the whole case, because not satisfactorily explained away by him.*

If a case of suspicion is made out, calling for explanation, those should explain who alone have the power, if there is good faith.

Clements v. Moore, 6 Wall., 315.

Goshorn's Ex'rs v. Snodgrass, 17 W. Va., 717, 767, 769, 770.

Harrell v. Mitchell, 61 Ala., 271, 279.

Wharton v. May, 5 Vesey, Jr., 49.

Chandler v. Attica, 22 Fed. Rep., 625, 627.

Lane v. Starkey, 18 N. W. Rep., 47, 48.

Starin v. Kelly, 88 N. Y., 421.

In re Gordon v. People, etc., 33 N. Y. 501, et seq., the head note, which indicates substantially what the court holds, says:

"When one accused of the crime of murder is required to account for his whereabouts at a particular time, to avoid the force of criminating circumstances, his omission to produce such evidence is not, in law, conclusive of the facts in dispute.

The absence of an attempt to account for his whereabouts, when it appears to be in the power of the prisoner to do so, is strong presumptive evidence against him.

In Rogers v. Hall, 4 Watts., 361, Gibson, C. J., among other things, said:

"Though in the absence of proof to the contrary the presumption is in favor of the fairness of a transaction, yet flight and an absolute general assignment are in themselves circumstances demonstrative of fraud; and, though not conclusive, they undoubtedly impose on the assignee the necessity of elucidation. He is the most cognizant of the transaction and best able to explain it; *and why should the business of explanation be laid on the creditors, placed by him in the dark and entitled to light?* The question is on the existence of a valuable consideration; and it would be against a fundamental rule of evidence to burthen them with the necessity of producing negative proof. *The policy of handling these transactions with little tenderness is obvious and uncompromising. They are ulcers of frequent occurrence in practice, which require to be thoroughly probed, and, if necessary, laid open to the bone; and on him be the consequences who withholds the means of doing so.*"

See further:

Seitz v. Mitchell, 94 U. S., pp. 583, 584.

Thompson v. Loenig, 14 N. W. Rep., 168.

Fisher v. Shelver, 53 Wis., 498, 501.

C. On the subject of intermixture the authorities are substantially clear.

"If a man wilfully and wrongfully mixes his own goods with those of another owner, so as to render them indistinguishable, he will not be entitled to his proportion, or any part, of the property."

The Idaho, 93 U. S., pp. 585, 586.

2 Kent, 364.

Bigelow on Fraud, p. 197.

The doctrine, with regard to property acquired by fraudulent conveyance, is fully stated *in re Robinson v. Holt, 39 N. H., 561, et seq.* We quote therefrom:

"By the statute of 13 Elizabeth, chapter 5, made perpetual by 29 Elizabeth, chapter 5, and adopted as a part of the common law of this State, all conveyances made to delay, hinder or defraud creditors are fraudulent and void as to those creditors.

"He who purchases or takes a mortgage of property, with knowledge of a fraudulent design of the vendor or mortgagor, thereby to defeat or delay his creditors, is in law charged with a participation in the fraud, although he may pay a full consideration and take immediate possession. The transaction is *mala fide*, and the conveyance

or mortgage to him is utterly void and of no effect as to creditors.

"The doctrine of the confusion of goods has been often discussed, and may be considered as clearly and distinctly settled. If the goods of several intermingled can be easily distinguished and separated, no change of property takes place, and each party may lay claim to his own. If the goods are of the same nature and value, although not capable of an actual separation by identifying each particular, if the portion of each owner is known, and a division can be made of each proportionate value, as in the case of the mixture of corn, coffee, tea, wine, or other articles of the same kind or quality, then each may claim his aliquot part; but if the mixture is indistinguishable, because a new ingredient is formed, not capable of a just appreciation and division according to the original rights of each, or if the articles mixed are of different values or quantities, and the original values or quantities cannot be determined, the party who occasions, or through whose fault or neglect occurs the wrongful mixture, must bear the whole loss."

This is more favorably stated for defendants than the cases warranted, though it is possibly less accurate than the principles of law enunciated by all the cases warrant.

See upon the same subject—

Willard v. Rice, 11 Met. (Mass.), 493.
8 Pick (Mass.), 443.
Beach v. Schmaltz, 20 Ill., 185.
Taylor v. Jones, 42 N. H., 25.
Story Eq. Jur., Sec. 623.

The doctrine is applicable in attachments, but the law is not stated with accuracy by Drake. See *Drake, Sec. 199.*

As going to show that the New Hampshire case above quoted from does not state the doctrine exactly, see *Beach v. Schmaltz, supra*, where the property confused consisted of lumber. In some of the cases the forfeiture was extensive. But principle cannot be judged by the amount at stake.

Now we urge the whole doctrine of confusion against them. They have no right to complain thereat; it is their own creating. They have sown, so should they reap. Nor can they urge the doctrine of partnership, for they disclaim that.

But if the court should be reluctant to visit the defendant with that consequence, we are disposed to defer to the court's judgment, contenting ourselves with the amount the court will find us to have been defrauded out of with the profits of 25 per cent. thereon, from October, 1877, as is allowed in cases of trust.

Perry on Trusts, Sec. 471.

See also—

Story Eq. Jur., Sec. 465.

This would entitle us to $5000, and 25 per cent. per annum thereon from, say October 1, 1877.

This would practically relieve the defendant, M. S. Cohn, of any punishment for his participation in the

fraud; he would thereby only be held to account, with Isaac Cohn, for what Isaac Cohn has fraudulently withheld.

The defendants are constructive trustees for our benefit.

Perry on Trusts, Secs. 166, 212.

The same remedies prevail against constructive trustees as other trustees.

Ibid.

(D.) No point was made below on the question of limitation. The issue was not made in the pleadings, though, out of abundance of caution, some testimony was taken by complainant regarding same. (*)

The fraud was not fully consummated prior to September, 1877, and certainly was not then open to discovery. The bill was filed August term, 1879, of the District Court at Fort Smith. (Print. Rec., 2.) It was not discovered until within two or three months of filing the bill. (See the depositions referred to.) Kramer was not appointed until September 13, 1879. (Print. Rec., 1.) In this case the creditors lived at a considerable distance from Fort Smith. And great care was taken to cover up the fraud, and to make it dangerous to proceed upon mere suspicion. As soon as apparently safe ground was found the suit was instituted. We are not obliged to bring a bill, involving large expense upon suspicion or slight grounds, nor until there is a reasonable prospect of succeeding.

(*) See depositions of M. A. Cohn and Frederick Kramer. Print. Rec., 61.

See—

Clark v. Clark, 17 How., 315.

Bailey v. Glover, 21 Wall., 342.

Martin v. Smith, 1 Dill., 85.

Carr v. Hilton, 1 Curt., 230;

Pritchard v. Chandler, 2 Ib., 488.

Shannon v. White, 6 Rich. (S. C.) Eq., 96.

See also—

Lathrop v. Drake, 30 Legal Int., 141.

Stevens v Houser, 39 N. Y., 302.

Sedgwick v. Casey, 4 B. R, 161.

Smith v. Crawford, 9 B. R., 38.

Bump on Bankruptcy (8th ed.), 543.

2. We also complain that, after dismissing the bill as to M. S. Cohn, the court below completely frustrated a *bona fide* and just effort to circumvent fraud, by also dismissing the bill as to Isaac Cohn, upon his petition for re-hearing, because it had no jurisdiction.

(A.) The lower court had no doubt of its jurisdiction to entertain the bill in the first instance; nor does that seem to be open to doubt.

Lathrop v. Drake, 91 U. S., 516.

Bump. Bankruptcy (8th ed.), 214, seq.

(B.) The question is whether, having dismissed the bill as to M. S. Cohn, the court below still had a right to retain jurisdiction, and to render a decree against Isaac

Cohn. This is a vital question to complainant and the bankrupt's creditors. For if the bill is dismissed, (*a*) a resort must then be had to law by an action analagous to an action on the case; and as a trustee relationship carries no greater remedies by action at law, than any other action in case or assumpsit, the same limitation would seem to run in favor of the bankrupt as would exist with regard to any other person, and thereby the doctrine in equity regarding limitation declared in *Clark v. Clark* (*17 How., 315*), would be rendered wholly unavailing. (*b.*) The bankrupt has been put upon notice of what is required, and it will, in the light of ordinary experience, be impracticable to prove the same case against him again.

This is not one of those cases where a complainant, because he has failed to secure a portion of the relief prayed, should have his bill dismissed; for originally here was a cause of equitable cognizance, and the relief prayed against either defendant was of such a nature as that courts of equity had concurrent jurisdiction over it with courts of law; fraud being alleged, and the fraud being of a secret nature, and an account and trust relationship being involved, there was every reason for a court of equity, having obtained jurisdiction, to give all relief that was appropriate in the case. Not merely because the process of a law court was inadequate to give proper effect to the doctrine of limitation properly applicable in such cases (as declared in *Clark v. Clark, supra*), but likewise for the reasons last above stated the court below should never have dismissed the bill as to Isaac Cohn.

The ultimate relief given in *County of Mobile v. Kimball, 102 U. S., 691, 705*, was purely legal.

And, see:

Versalius v. Versalius, 9 Blatchf., 189.

Foster v. Swasey, 2 Wood & M., 217, 221.

Bean v. Smith, 2 Mason, 252, 267.

Hamilton v. Cummings, 1 John. Ch., 517, 519, seq.

People v. Chicago, 53 Ill., 424, 428.

It seems to be held in Federal Courts at least that courts of equity have a clear concurrent jurisdiction with courts of law in cases of fraud, without regard to the adequacy of the remedy at law.

See—

Jones v. Bolles, 9 Wall., 364, 369.

Wood v. Mann, 1 Sumner, 504, 505.

Even if legislation has made modes of relief at law more effectual than formerly, the original equity jurisdiction remains, except when expressly taken away.

See illustrations—

Versalius v. Versalius, 9 Blatchf., 189.

Cannon v. McNab, 48 Ala., 99.

Millsaps v. Pfeiffer, 44 Miss., 805.

Babcock v. McCamont, 53 Ill., 214.

Hardeman v. Battersley, 53 Ga., 36.

Dobyns v. McGovern, 15 Mo., 662, 668.

Mitchell v. Otey, 23 Miss., 236, 240.

Case v. Fishback, 10 B. Monr., 40, 41.

King v. Payan, 18 Ark., 583, 587, 588.

Jones v. Jones, 28 Id., 19.

And where it appears that if the bill be dismissed the remedy of complainant at law would prove abortive or barred by limitation, the bill ought not to be dismissed.

Hardeman v. Battersley, 53 Ga., 36, 38.

Did not defendants waive the question of jurisdiction by proceeding to a hearing?

See—

Mays v. Taylor, 7 Ga., 238, 244.

We submit that if our bill be dismissed as asked by defendants, a premium will thereby be given to a bold and dangerous species of fraud.

Respectfully submitted,

MORRIS M. COHN,

Of Counsel.

Mitchell v. Otey, 23 Miss., 236, 240.

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Of Counsel.

119-355

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The Supreme Court of the United States.

42

FREDERICK KRAMER, AS ASSIGNEE, ETC.,

vs.

ISAAC COHN AND M. S. COHN.

BRIEF FOR APPELLANT IN REPLY TO APPELLEES' BRIEF.

MORRIS M. COHN.

UNION PRINTING COMPANY.

The Supreme Court of the United States.

FREDERICK KRAMER, AS ASSIGNEE, ETC.,

vs.

ISAAC COHN AND M. S. COHN.

BRIEF FOR APPELLANT IN REPLY TO APPELLEES' BRIEF.

REGARDING THE FACTS.

I have submitted the views I have regarding the facts, and it is needless to repeat the argument contained in my opening brief. It remains to be said that Isaac Cohn and M. S. Cohn were not below that grade of intelligence which knows how to put up a tale to bolster up a fraud. The court below certainly thought there was fraud, as is evidenced by its decree. (Printed Record, pp. 15, 16.) And we say that the same fraud which affected Isaac was likewise true as to M. S. Cohn.

The appellees' counsel refer to auction goods and say that they were not cash, because the auctioneers say that

the goods were sold on M. S. Cohn's credit. We fail to see that this shows the goods to have been sold on a credit. It simply shows that M. S. Cohn was the name in which the goods were bought. The abstract of payments made from the books (pp. 40 to 51, Printed Record) shows that very little was paid out at Fort Smith to the auction houses during the whole course of the business up to the date of taking the depositions, except to M. Stern & Co., which leaves no other inference than that they were paid for before shipment. It seems that there was an exception as to M. Stern & Co., as to whom a portion was sold on time. Auction goods are ordinarily spot cash, and while it may not be admitted by Cohn that he paid cash therefor, as a rule he classes them with goods that there is no dispute were paid for in cash. (See pp. 188 and 190, Orig. Record.) Moreover, it is not material to the argument whether they were paid in cash or not, so long as they were paid for as shown in the abstract from the ledger. That is only one out of numerous links in the chain of testimony here.

We might add that, from the appellees' standpoint, this particular business was capable of doing all sorts of remarkable things, like a mythical N. Goldsmith & Co., who ship 300,000 pounds of hides and furs. We, however, judge it by the ordinary standard of other merchants at Fort Smith. The profits this business can make, even before it is in operation, are extraordinary.

There is a significant silence manifested by appellees' counsel toward the correspondence between Isaac Cohn

and Washer (see Washer's deposition, beginning page 48, Printed Record, and Exhibits, pp. 62, 63, *Ib.*), which showed, among other things, that Isaac Cohn was interested in the business. (P. 148, Orig. Rec.) And there is an equally astounding silence of counsel for appellees regarding the causes for suborning Henry Nathan. (I have referred to this on p. 49, seq., of my opening brief.)

Washer said of the letter he got from Isaac Cohn about November 4, 1879 (which was lost or mislaid during a fire that burned out his house):

"The contents of that letter *was* that they were doing "well at Fort Smith; that they had made about thirty "thousand dollars, and that I might be assured that he "was not working for wages."

And in the letters exhibited by Washer, Isaac Cohn is endeavoring to get Washer to swear falsely as to his books that were saved and to the amount collected from those books. Isaac Cohn wanted Washer to say that he didn't know of any books he (Isaac) saved, nor of any money he sent away. Whereas the facts are diametrically the other way. (Compare Washer's deposition, pp. 58, 59 and 60, Printed Record; Exhibits, pp. 62, 63, *Ib.*)

To this the counsel of appellees say: "The law did not "require us, in order to make good our defense, to spend "our time and substance in taking testimony to refute the "depositions of Washer."

REGARDING THE LAW.

In the brief for appellees, on page 34, certain principles of equity jurisdiction are stated, aud this case is classed under the head of concurrent jurisdiction.

But those principles do not justify such a classification.

However true it may be that chancery has concurrent jurisdiction in matters of fraud with courts of law, that position throws no light upon the application of the principles so stated.

The prayer of our bill in substance is for a restraining order and receiver; that Isaac Cohn and M. S. Cohn account for the goods and money fraudulently conveyed by Isaac Cohn to M. S. Cohn, and secreted by them, with the increase thereof; that if any interest be found to exist in M. S. Cohn to certain property in a business at Fort Smith, Arkansas, that a reference be had to ascertain the same; that if the defendants aforesaid fail to answer, the whole of said property, consisting of a stock of merchandise, be vested in complainant; that proper orders be made for the disposition of the stock, and other proper relief.

Surely this was a case peculiarly of chancery jurisdiction. It therefore could not be held subject to Rules VI and VII, stated in the brief referred to.

See Pomeroy Eq. Jur., vol. 1, part 1, sec. II, relating to exclusive jurisdiction, especially par. 155.

Nicoll v. Trustees of Huntington, 1 John. Ch., 166, holds simply that where a bill is based on a title, which turns

out to be in serious dispute, it will be dismissed. In *Russell v. Clark, 7 Cranch, 69,* this court did not aim to dismiss the bill unless certain parties were not brought in, who had some interest in the fund in dispute. It held that so far as discovery is concerned, where that is abandoned by complainant, his bill, unless some other ground of chancery jurisdiction exists, must be dismissed. A bill of this nature is purely auxiliary in its nature, and ceases to have any basis when the intention to obtain discovery is abandoned.

See Pomeroy Eq. Jur. vol. 1, par. 142.

Story Equity Jurisprudence, sec. 71, merely reiterates what is said in the case last mentioned.

Mitchell v. Dowell, 105 U. S., 430, holds that when a bill to foreclose a mortgage is brought, and there turns out to be no mortgage, the bill must be dismissed.

I submit that these cases do not conflict with anything urged in our opening brief, nor the authorities there referred to. (See p. 73 of said brief.)

On pages 37 and 38 of appellees' brief authorities are cited to show that this was not a suit properly brought in chancery.

Perry on Trusts, vol. 1, sec. 128, is on the subject of identification. We have certainly identified the funds of Isaac Cohn—that is, we have traced them up, unless we have failed to show that he had any; and that cannot be truthfully contended.

Compare *Pomeroy Eq. Jur. vol. 2, par. 1051.*

In *Huff v. Ripley, 58 Geo., 12*, had the complainant alleged that the fraudulent vendees were insolvent, the courts' intimations show they would have entertained the bill.

In *Youngblood v. Youngblood, 54 Ala., 486*, a chancery court was asked to relieve where the law courts of the State gave the right to recover moneys erroneously paid upon fraudulent representations.

In *Bay City Bridge Company v. Van Etten, 36 Mich., 210*, assumpsit or trespass on the case would have obviously afforded a complete remedy, since the action was for moneys had and received for the account of the complainant.

Dugan v. Curlton, 1 Ark., 31, was a proceeding in chancery to recover damages for a breach of contract. There was no prayer and no intention to set aside the contract on the ground of fraud, and the court found that there was no fraud.

I proceed upon the idea that it is not necessary to show to this court, by authority, that a creditor may most appropriately resort to chancery to avoid a fraudulent conveyance.

Now the assignee occupies the position of a creditor who has obtained judgment, and exhausted his process, in the law court.

Re Werner, 5 Dillon, p. 121.

Barker v. Smith, 12 Nat. Bank Reg., 474, 478.

The position of parties who hold property fraudulently conveyed is that of constructive trustees for the interested parties.

Wait on Fraud. Con., sec. 385.

Bump on Fraud. Con. (2d Ed) pp. 237 and 238.

And this may always be enforced in equity.

Bump, p. 238.

See Pomeroy Eq. Jur., vol. 2, par. 1051.

Buffington v. Harvey. 95 U. S., 99, was a bill by an assignee to set aside a fraudulent conveyance.

Indeed the assignee is the only proper complainant.

Glenny v. Langdon, 98 U. S., 20.

Trimble v. Woodhead, 102 U. S., 647.

Moyer v. Dewey, 103 U. S., 301.

I claim that in principle there is nothing to distinguish this case from *Martin v. Smith, 1 Dillon, 85.*

Put in gingerly at the end of their brief, I infer that the appellees do not seriously rely upon the position that this case was not a case of chancery jurisdiction.

Respectfully,

MORRIS M. COHN.

119-355

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IN THE

Supreme Court of the United States.

For the Western District of Arkansas.

FREDERICK KRAMER, as Assignee in Bankruptcy of ISAAC COHN, - - - - - - *Complainant.*

vs.

ISAAC COHN AND MARK S. COHN, - - - - - - *Defendants.*

J. H. CLENDENING,
M. H. SANDELS,
Counsel for Defendants.

LEVISON & BLYTHE STATIONERY CO. PRINT, ST. LOUIS.

IN THE SUPREME COURT.

LEHMAN ABRAHAMS & CO., - *Plaintiffs in Error,*

vs.

M. S. AND ISAAC COHN, - - *Defendants in Error.*

This cause is submitted by defendants in error upon the following arguments, which are substantially the same as submitted to the Circuit Court. They were originally, and still are, divided as follows:

I. The argument upon the whole case.

II. The argument of defendant, Isaac Cohn, upon his petition for a rehearing.

The bill alleges a fraudulent withholding of assets by Isaac Cohn a bankrupt, and charges that the proceeds of said fraud went into and constituted the Fort Smith business of M. S. Cohn. The latter allegation, *alone*, gave jurisdiction to the Court of Equity. A suit for the money alleged to have been held back by Isaac Cohn could have been brought at any time by the assignee of Isaac Cohn, and the evidence obtained on this trial was clearly within the reach of a court of law.

The record shows, by overwhelming proof, a clear exculpation of M. S. Cohn from the fraud alleged against Isaac Cohn. As to him, the bill was originally dismissed, but a personal decree against Isaac was rendered. This was set aside and the bill dismissed as to him also, upon hearing of the petition for reconsideration. This was clearly right. The only equity in the bill was

the alleged incorporation of Isaac Cohn's assets in M. S. Cohn's store. When this was disproved, the Court had no power to proceed further upon the principle so clearly stated in Mitchell vs. Dowell, 105 United States Rep. 430.

A new question is made by appellants brief.

The proposition asserted is that where a suitor erroneously brings his action in equity, it will be retained, although equity has no jurisdiction whenever it appears that the remedy at law will be barred by limitation upon the dismissal of the bill.

This is monstrous! This Court, in the cause above cited (105 U. S. 430), passed upon a case exactly similar. With such amendments as appeared necessary, the original briefs are herewith submitted.

The Circuit Judge, with the parties all before him, was able to judge of the credibility of witnesses. Upon the proof, he held M. S. Cohn guiltless of any participation in the alleged fraud; and such being the case, it was unnecessary to consider further as to Isaac Cohn's liability, because the Court was without jurisdiction to proceed further.

M. H. SANDELS,
J. H. CLENDENING,
Counsel for Defendants in Error.

IN THE

District Court of the United States.

For the Western District of Arkansas.

FREDERICK KRAMER, as Assignee in Bankruptcy of ISAAC COHN, - - - - - - *Complainant*

vs.

ISAAC COHN AND MARK S. COHN, - - - - - - *Defendants.*

DEFENDANTS' BRIEF.

The case, as made by the pleadings, is as follows, to-wit:—

The complainant, in his original bill, recites the bankruptcy proceedings of Isaac Cohn, showing the adjudication to have been on or about April 24, 1877. That, there being no assets found, the assignee was discharged July 30, 1877. Schedules filed June 24, 1877. Bankrupt discharged August 5, 1877.

That Isaac Cohn had, prior to June 24, 1877, been doing a large business at Pine Bluff, and that M. S. Cohn was his clerk.

That, short time before the bankruptcy proceedings, the store of Isaac Cohn was burned, and that Isaac Cohn falsely claimed to have lost his entire stock and books of account. That he procured some of his creditors to file petition in bankruptcy against him, hoping, thereby, to obtain release from creditors to amount of $19,695.00.

That was not exceeding two months before filing the bill, the complainant found that the pretenses of Isaac, as to losses in said fire, were false; that he had previous to fire moved large quantities of goods, and sent $6,000 to his father in Germany.

That Isaac caused the parties to hold the goods and money until after discharge in bankruptcy; and with such assets opened the Fort Smith store in the name of his former clerk, M. S. Cohn.

That Isaac saved his books, etc., and collected large sums of money, even during the pending bankrupt proceedings. That the fire was part of a conspiracy between Isaac and M. S. Cohn, to defraud the creditors of Isaac. That Isaac is owner of the business carried on under the name of M. S. Cohn, and was started and maintained by funds of Isaac kept back from his creditors.

Concludes with prayer for injunction, receiver, etc., and for an accounting.

This bill was filed October 7, 1879.

On the 29th of October, 1880, amended bill was filed, which recites the original in the main (except as to some of the charges in original bill), and alleges that if M. S. Cohn has any interest in the stock in said Fort Smith store it is that of a partner.

ISAAC COHN'S ANSWER—

Admits allegation that he did large business at Pine Bluff, but denies that M. S. Cohn was ever a clerk of his.

Admits that his store was burned, contents consumed; and that he owed, at that time, about $20,000.00, but denies that his representations as to destruction of assets were false.

Denies that before the fire he removed large quantities of goods; or that he sent $6,000 to his father in Germany.

States that he did, after the fire,—about January, 1878,—send two small cases of goods to Boschwitz, and afterwards sold them in Memphis for $275.

Denies that these or any other goods were held by Boschwitz, or any other person for him, until after his discharge in bankruptcy, and then transmitted to him.

Denies that with such assets, or any other belonging to him, he opened a business in Fort Smith, and alleges that he does not, nor did he ever, own a dollar's interest in the business.

Admits that after the fire he collected some money; expended a good part in paying home debts, such as clerk hire and monthly bills.

Denies being in Pine Bluff since March 8th, after the fire; or that he has collected anything from his old business since that time; and denies that any of the proceeds of any collections are in this business.

Denies that the fire was the result of a conspiracy to defraud creditors; states that he had over $28,000 worth of goods in store, without a cent of insurance; that, by the fire, he was reduced to a condition of poverty.

Denies any ownership or interest in the Fort Smith store, or that he ever had any in it, or in any thing used in starting said business.

Admits sending some money to his parents in Germany since the fire, but denies receiving it back, or that he has any hopes of getting it back.

M. S. COHN IN HIS ANSWER—

Admits that it may be true that Isaac was adjudicated a bankrupt, etc.; that Isaac was in business in Pine Bluff, and his business house was burned.

Denies that he ever was a clerk of Isaac's, except for a few months in Memphis, in 1872.

States only business relations between him and Isaac at Pine Bluff was as partners, until some time in October, 1872. From that time until Spring of 1875, he and Isaac were not on speaking terms. That he has no knowledge, except from information, as to the burning of Isaac's store, what was lost, or what he claimed or owned.

That he has no knowledge or information, except from complainant, as to charge of Isaac sending $6,000 to Europe, secreting goods, etc. Has no knowledge of collections having been made by Isaac after the fire.

Denies that Isaac ever opened business in his, M. S. Cohn's name, in Fort Smith, with means of his own.

Admits that Isaac is his second cousin.

Denies that Isaac is, or ever was, either directly or indirectly interested in the Fort Smith store; that he has or ever had any other connection with it than that of a clerk.

Alleges that the business was opened and has been continued, exclusively by him, with his own means and credit.

That the charge that he was in any manner concerned in burning Isaac Cohn's store, or in any way to aid him in defrauding creditors is slanderous and false.

There is a prodigality of allegation about the bill, in this cause, which commends its architect as an artist in

that species of composition; the charges, as Judge Jere Black would say, are "large, loose and lavish."

Of the defendant, Mark Cohn, we shall speak hereafter. Isaac Cohn had been a resident in Fort Smith more than two years at the time this proceeding was inaugurated.

He had established a reputation as a business manager, second to no merchant in that thriving city. He had worked up a small business to immense proportions.

The sheets from the ledger which counsel for complainant attached to his (Isaac Cohn's) deposition, show that he was turning over great quantities of goods at a season when many plying the same avocation were "waiting for something to turn up."

At this time this bill is filed. It charged that Isaac Cohn had been, up to October, 1876, a merchant at Pine Bluff, and that M. S. Cohn was his clerk.

That he had been, before that time, shipping and concealing large quantities of goods, and secreting large sums of money. That about the time named, he, the defendant, Isaac Cohn, set fire to and burned up his said store, and out of the proceeds of his money and long premeditated stealings, opened the business at Fort Smith; and that M. S. Cohn had no interest, or, if any, only a nominal interest in the same.

These are grave charges; and in support of them complainant filed the affidavits of Bloom and others. The inevitable consequence followed "as the night the day,"—the prayer for injunction was granted and the business was closed. The Marshal of the United States took possession, and for days the closed doors of M. S. Cohn gave proof to the world that Isaac Cohn had committed arson, robbery and larceny, and that in each of these felonies Mark Cohn had been his aider and abettor.

We suggested just now that these are grave matters, and it shall be our duty as also our pleasure, in what follows, to inquire upon what proof these charges rest;

and upon what ground the extraordinary powers of the chancellor have been invoked.

We propose to assert a few propositions and earnestly beg attention to them.

I. That the burden of the proof is upon the complainant.

II. That the proof must be competent and legal.

III. That the proof must extend not only to all facts which go to fix the liability of defendant, Isaac Cohn, to complainant, but, also, to all facts which are necessary to support the jurisdiction of this Court.

The propositions will not be gainsaid. They are simple. We shall not differ with our learned brethren as to the grand divisions of evidence, positive, presumptive, etc., etc.

We agree that presumptions are of two kinds—of fact and of law.

We agree that as to the former, certain facts being proven, certain *inferences* follow as a necessary sequence, and that these inferences may be legitimately indulged. But we submit and shall insist, that these inferences and presumptions, unlike the sins of our forefathers, do not go down to the third and fourth generation of their children. It is proper and legal to draw inferences from *facts proven;* but it would be subversive of every safeguard with which the constitution and the law panoplies the citizen could inferences be drawn from facts, presumptions from inferences, speculations from presumptions, and conclusions from speculations.

Law does not—and how can equity, which is justice—recognize, or tolerate, a process beset with so many uncertainties? And how can the chancellor, under the sanction of his oath, draw satisfactory or convincing conclusions from premises so unsubstantial?

Yet it is, for the most part, upon such premises, that the complainant seeks and asks a decree in this cause.

We do not exaggerate the extent to which our learned

brethren, appearing on behalf of complainant, indulge in this kind of argument. They well know, certain premises being given, how to frame an unanswerable superstructure of argument. But their premises are denied, and we appeal to the evidence to settle our differences.

On page 13 of their neatly printed brief they say:

"And in Fort Smith, where the business managed by "Isaac Cohn is, business men have regarded the business "as that of Isaac Cohn." (See depositions of Sparks and Breen.) After arguing this premise they say, on page 14:

"Could their belief have been taken, Sparks and "Breen, and every other business man in Fort Smith "would have said that the Fort Smith business, created "and maintained by Isaac Cohn, was his, or that he had "a large interest therein, according to his belief."

By reference to the depositions, we find that Sparks and Breen say that Isaac Cohn *appears* to manage the Fort Smith business, but that they have no means of knowing whether he has a dollar's interest in it.

Yet this being the proof, and the only proof, upon the point, counsel point with confidence to the universal verdict of the community, and say, on page 14:

"*Looked at in the above way*, and that is the proper "way, *this judgment* is one of the strongest factors that "can be appealed to. It is as free from error as proof "can well be," etc., etc. On page *15* they refer to this popular verdict as one of the "Circumstances—adumbrations surrounding the case."

We call attention to this not because, intrinsically, it has any value, but simply as illustrating the point before stated.

That Sparks and Breen *testified* is *a fact.* That they *would* have sworn to anything which they did not swear to is an unwarranted *inference* from the above fact; and "that every other business man in Fort Smith" would

testify to a given belief, is an unwarranted speculation upon an unwarranted inference.

"The law is not an exact science" has been well and truly said; but there are, nevertheless, certain rules which govern the action of courts; and a *conclusion* reached by a process so tortuous as the above indicated, is not justified by any which it has been our fortune to observe.

Let us, then, discharge all surplusage; let us purge this cause of sophistical argument, and face the issue fairly and squarely. Let us "hew to the line," and let the chips fall where they will or must.

The bill charges that Isaac Cohn secreted from his creditors a sum of money, and that this fund was invested in the business in Fort Smith. *Upon this depends the jurisdiction of this court.* If complainant prove that Isaac Cohn secreted money from his creditors, this simply entitles the assignee to recover the amount thereof from him in an action at law.

If the complainant prove that M. S. Cohn knew, or had reason to believe, that Isaac Cohn had so acted, this still does not alter the case.

In a federal court of equity a personal judgment can only be had where the rules provide for it. To enable the court to render a decree for complainant at all, it must be shown that the money alleged to have been kept back by Isaac Cohn went into the Fort Smith store.

Let us impress the point here stated.

Our proposition is, that unless the money kept back from creditors by Isaac Cohn be shown to have gone into the Fort Smith business, complainant must fail, because, as to M. S. Cohn, this is an action *in rem;* and, except in those cases where the rules have otherwise provided, no personal judgment can be rendered by a court of chancery, even where there is also a decree for complainant *in rem.* There is no rule to aid complainant here. The power of the court to render the

decree *in rem*, is drawn from its chancery jurisdiction. Its power to render a personal judgment comes from the acts of Congress prescribing its common law powers.

A court cannot grant relief where its power to do so is drawn partly from its general chancery jurisdiction, and partly from a statutory jurisdiction.

Fithian *vs.* Monks.
43 Mo. 502.
8 Howard, 495.
2 Ohio St. 223.
4 McLean, 262.

Before the passage of the statutes in the various States, and the adoption of Rule , we had the following well established rule respecting mortgages, which is applicable here.

A circuit court of the United States, on a bill to foreclose, has no power to decree payment of balance due by the mortgager after sale of mortgaged premises.

Norman *vs.* Lee.
2 Black, 500.
Orchard *vs.* Hughes.
1 Wallace, 73.
4 Kent Com.
Marg. pp. 136-145.
2 Wash. R. Prop. 50.
2 Jones Mort. sec. 1223.
1 Jones Mort. secs. 677-678.
1 Nash. Pl. and Pr. 728.

It is only where a court of chancery would have had exclusive or concurrent jurisdiction that a decree *in personam* against the mortgager can be rendered.

Morgan *vs.* Wilkins.
6 J. J. Marsh, 28.

Fleming *vs.* Sutton.
1 Dev. & Bal. Ch'y, 621.
Stork *vs.* Mercer.
3 How. (Miss.) 377.

In proceedings *in rem*, the object is accomplished when the property is reached, and equity has nothing further to do in the matter.

2 Ky. Dig. p. 197, sec. 67.

So here, if by the proof, equity can put its hand upon this property, and identify it as that kept back by Isaac Cohn, let it do so. If not, then it is useless to discuss the possibility of his personal liability, because, if liable, this court has no power to render a personal judgment against him, for equity has nothing to do with the matter.

Then we stand firmly upon our proposition, that if the proof fails to trace the Isaac Cohn money into this store, the court can grant no relief to complainant.

Let us see, then, how the proof stands upon that point, and when we have determined *that*, we have decided the case.

It is not contended by complainant that any witness swears directly to the investment of Isaac Cohn, in the Fort Smith business; but it is insisted that the *fact* appears with sufficient distinctness from circumstances.

In considering this question, you will bear in mind that the burden of proof is upon the complainant and that we are under no obligation, moral or legal, to expend time and money in taking proofs—until a case is *prima facie* made against us.

Where the equity of the bill is denied, fully, by the sworn answer of the defendant, such a denial cannot be overturned save by the testimony of two credible wit-

nesses; or one witness with strong corroborating circumstances.

2 Dan'l Ch'y. Pl. and Pr. 983—*Perkins Ed.* citing 6 Wheaton, 468.
1 Phil. Ev. 154-155.
9 Cranch, 160.
2 Story Eq. Jur. § 1528,

and about one hundred other cases; see also

8 Ark. p. 9.

The operation of the defendant's answer is the same, although the equity of the plaintiff's bill is grounded on the allegation of fraud.

8 Gill and John. 171.
1 Iredell Eq. 226.
1 Wendel, 583.
3 Paige, 557.
2 Blackf. 324.
2 John. Ch'y, 92.
1 Iredell Eq. 290.

The witnesses must be witnesses to the facts charged and denied.

Leaving for a moment other facts charged, and turning to the one jurisdictional fact charged and denied, let us see how the evidence stands as to that.

Isaac Cohn's store was burned in October, 1876, at Pine Bluff. He collected from his indebtedness about $2200.—(Dep. of B. Washer.)

There is no foundation for the assertion by counsel that the amount was larger.

Washer says: "The whole amount collected by both of us amounted to about $2200."

Washer sent between $1000 and $1300 to New York, for Cohn. He lived in Pine Bluff from October, 1876, to

March, 1877; that five months living cost something. He settled with the bank (see Dep. J. W. M. Murphy.)

It is but fair to assume that these things were not all, but that many other little sums, including clerk hire, etc., were expended, which consumed the $900—collected, but not remitted to New York by Washer.

Franklin swears Cohn said he had sent the money to Europe. Bloom swears the same, which supports the declaration of Isaac Cohn, that he did so remit the money. Isaac Cohn further says that not one cent of the same ever came back to him, and plaintiffs have no proof to overcome this denial.

Isaac Cohn sold the goods received by Boschwitz and forwarded to Memphis, for $375.

Boschwitz says these were all the goods received by him, the statement of counsel to the contrary, notwithstanding. What became of this $375 we don't know. In his answer he swears that he received but $275. But complainant shows by his schedule in bankruptcy that he had none of that amount in April, 1877. As to these goods, I. Cohn, in his answer, states that he received them in payment of a debt, after said fire occurred. In a letter to Washer he states that these goods were received from him. Washer swears that he did not owe Isaac Cohn anything, and did not pay him any goods. But, unfortunately for complainant on this point, Mr. Washer is expressly contradicted by Sam'l Franklin, another witness for complainant, who says:

Cross-Int. 2.

"*Question.* Could you now say that Cohn said "these goods had been saved by having been in Washer's "hands?

"*Answer.* I could not. I *know* that Isaac Cohn fre- "quently let Washer have goods to sell, *and that* "*Washer was indebted to I. Cohn, the defendant, in* "*about the sum of $300, at the time of the fire.*"

So upon the question of the goods, the complainant's

witnesses offset and *antidote* one another, and leave the allegation of the answer, in that behalf, undisturbed.

As to the amount of the goods, it is immaterial, because it is not contended that these goods went into the Fort Smith stock; and it would also be immaterial to inquire as to the proceeds, except to show the stilted extravagance of counsel.

Washer says the goods of Cohn were kept separate from his, and were sent to Boschwitz.

Of course all the goods were sent, or Washer would gladly have told of their diminution.

Boschwitz says he received the goods, and that they were two or three small cases; that he kept these goods in his store for some time and then shipped them to Harry Cohn, at Memphis.

Int. 7. "Were *all* the goods received from Washer " for Cohn, so shipped?

Answer. "All but one or two coats, which I sold " myself."

In answer to cross-int. 9, he says:

"I unpacked and packed these goods myself, and " shipped to Harry Cohn, at Memphis, Tenn., all the " identical goods I had received, except one or two coats " which I had sold, and for which I paid Mr. Isaac " Cohn."

In answer to cross-int. 11, he says:

"It was a mixed lot of clothing. I don't remember " how many dozen there were."

In answer to cross-int. 15, he says:

"I considered the goods worth about $400—I would " not have paid more. My recollection is that Cohn " valued them at about, or near, $500, which I declined " to give."

Washer says the tickets were taken off them.

Boschwitz, in answer to interrogations 3 and 6, says: "They (the goods) were ticketed, but I don't remember " in what mark." And, "These goods, in unpacking,

" were placed on my counters, which also contained my " own goods; and an outsider, *not knowing our separate* " *marks*, would have been puzzled to say which were his " and which mine. They were not, however, incorpora- " ted with my stock, and I had no trouble in separating " them from mine when I went to repack them."

So the dazzling fortune which Isaac Cohn saved in these goods melts away, and the statement of the testimony is a sufficient argument upon the point. It is, then, established that Isaac Cohn saved from fire and from sale of goods.

Amount collected by Washer and Cohn, $2200.
" " " sale of goods, 375.

Total, - $2575.

It is not pretended, upon any testimony, that he had money when he escaped from his burning house. His watch and clothes were left behind and consumed. (Dep. Washer.)

Of this amount Washer sent to New York $1300. This left Cohn $1275.

Out of this sum he had to buy clothing, as all he had was burned; he paid his expenses for living and travel; (Washer says he traveled about the country a good deal). He paid the bank and paid such other matters as he had to pay; went to Memphis; went thence to St. Louis; lived there one and one-half months, and then swore to the schedule introduced. After six and a half months, with the payments made and expenses paid out of this fund, Isaac Cohn swears that he had nothing left. No witness contradicts him in this regard—his testimony stands alone upon the point. Yet for this oath counsel says he is a perjured villain.

In his answer Isaac Cohn says he sent yearly, to his parents, then aged respectively 80 and 71 years, sums of money. This sum of money sent to them, upon the dissolution and wreck of his business,—the last provision

possible to be made for them until hard work should again bring plenty to his coffers—is one of the events of a chequered life, to which he can always look to with pride and pleasure.

He swears that he never received a cent of it back. Is he corroborated?

Franklin swears he promised to pay his claim when the money came back, and the claim remains unpaid to this day.

Bloom states the same, both witnesses for the complainant. And M. S. Cohn, whom complainants introduce as their own witness, testifies that he knows nothing of Isaac Cohn's having money, and in his affidavit filed herein, which is substantially repeated in his testimony, he swears:

"Since we settled, in the presence and through the "agency of John Bloom, in October, 1872, I have never "received from Isaac Cohn, directly or indirectly, in "payment of any debt, as a gift or as a loan, or in any "other manner, or for any other purpose, one dollar "or cent, except such sums as have been remitted by "him to me, as the proceeds of sales of my goods in this "Fort Smith store."

Instead, then, of disproving this denial of Isaac Cohn's by two witnesses, complainant has corroborated and sustained it by *three*.

Upon this jurisdictional fact the plaintiff has also introduced defendant, M. S. Cohn.

The learned counsel see the danger to which they have subjected themselves, and manfully battle against it. But let us state the rule and the exceptions to it; and then we may proceed to inspect the views expressed.

The rule is that one who introduces a witness vouches to the court for his general credibility, and is not allowed to attack it.

The exceptions to it are:

I. Those cases in which the law requires a witness

to be called as the subscribing witness to a deed or will; and

II. Those cases where the witness, by trick or artifice of any kind, has procured himself to be summoned by the party, and who swears contrary to the facts he was called to prove.

Upon particular facts, a party may contradict his own witness. But this must be done by competent testimony, and not by the assertion of counsel.

There is no rule which requires a defendant, unless by truthful answers to legal interrogatories, to establish the plaintiff's cause; and there is no rule which warrants or justifies the application to him of the epithets *liar*, *knave*, *perjurer* and *villain*, unless, by competent testimony, his character as such is established. The law does not permit an impeachment of one's own witness by proof—and *a priori* it does not countenance the gratuitous imposition of infamy by counsel whose depositions have not been taken.

Counsel combat this view, and in support of the enlarged views which they, for the purposes of this case, hold, they quote at length from an article in the American Law Review, by Judge J. Wilder May.

We have not the article, but the extract plainly shows Judge May engaged in an attempt to show that "common experience" is opposed to the law.

If the Court please, we rest our argument upon Greenleaf and Wharton; the opposing counsel rely upon Judge May's idea of "common experience."

It is useless to spend time in fortifying our authors against attack. They have established reputations for accurate statements of principles, which Judge May as a contributor to the American Law Review cannot hope to dim.

Then complainant has introduced M. S. Cohn, and he, like all other litigants, is bound by the testimony of his own witness. Complainant went to the city of St. Louis

to take depositions, and, out of the vast population of that great city, selected M. S. Cohn as *the* man by whom he would prove the equity of his bill.

We ask your Honor's especial attention to this deposition. We ask that the Court do not rest its conclusions upon extracts and quotations; but take the whole, and construe it as you would any other written document.

We ask this for two reasons. First, because it is right and proper, and second, because counsel have, sometimes, been inaccurate in stating the substance and connection of his testimony.

M. S. Cohn gives a plain, intelligible history of his life for ten years. He—complainant's witness—shows how he met Isaac Cohn in St. Louis; swears he sent Isaac Cohn out here to open store for him; that Isaac Cohn has not one cent of interest in said business. And not another witness for complainant has a word of contradiction for his statement.

Shall we believe him?

He is complainant's witness, and certainly we may if we choose, for he has been introduced to the Court as a credible person. We maintain that whether we credit him or not, complainant must fail.

But let us see whether we are to credit him or not upon the face of his own statement.

Our conclusion, for the purpose of this argument, may be based upon whether he was able, without pecuniary help from Isaac Cohn to have done the marvels which he pretends to have done.

Let us look to his situation. He was certainly in better condition than stated in the bill.

Complainant, for some ulterior purpose, has certainly misstated some matters concerning him, which seem to have had more or less notoriety in the neighborhood of Pine Bluff. It is alleged that said M. S. Cohn was the clerk of Isaac Cohn in Pine Bluff.

This is not proved; but on the other hand, is distinctly disproved.

It is alleged that the fire which consumed Isaac Cohn's store, was one of a series of acts contemplated, connived at, and carried out by Isaac and M. S. Cohn, for the purpose of defrauding Isaac Cohn's creditors.

This is disproved.

It is alleged that he has no interest in the Fort Smith store.

That is disproved.

The affidavit of John Bloom, filed in support of the bill, charges, that in October, 1876, Isaac Cohn did business in the same house with him, and that M. S. Cohn was then and there his clerk and doing business for him.

Every witness examined contradicts that monstrous statement.

These statements, together with the base falsifications of Sam Franklin, furnished the basis for the injunction.

Were these statements purposely made? Had complainant a sinister motive?

Did he desire to prejudice the mind of the Court in advance? Or were these things simply the bubblings of exuberant mendacity? In either case how unwise!

"He who would rend the Titan oak,
Dreamed not of the rebound."

In the face of the testimony which must of needs follow, this attempted imposition assigns complainant to high rank in that ancient and honorable family, which "hath neither pride of ancestry—nor hope of posterity."

The proof shows that M. S. Cohn became a partner of Isaac Cohn in 1872; that in a short time they moved to Pine Bluff, and were partners until October of that year; and that a violent quarrel took place, and that a settlement of the co-partnership was then arranged through the agency of this same John Bloom, who has registered his perjured oath, that M. S. Cohn remained a clerk of Isaac Cohn in October, 1876.

It shows that at the time of the dissolution M. S. Cohn had $1,325. $1,000 in goods, $200 in Isaac Cohn's notes, with which he bought goods, and a wagon and mule, worth $125. In the fall of 1873 he moved to Jones' or K. Smith's Landing, fifty miles below, and there worked in the way described in his deposition. In the spring of 1875 he closed out his business and went to Europe; at this time he had about $6,000 cash, and $1,000 in notes and papers. (See Dep. M. S. Cohn, Cross-Int. 13 and Louis Hanauer.)

When he returned in fall of 1875 he had his notes and papers amounting to about $1,000—had New York draft for "over" $3,000, and $500 in cash; and of money loaned in Europe and not due when he left, he afterwards received $950 and $840.72. In short, he went to Europe with $7,000, and brought and received back, more than a year before Isaac Cohn was burned out at Pine Bluff, $6,290.72, certainly, and possibly a little more. (Cross-Int. 15.)

Of the $6,000 in money, taken to Europe, Schoolfield, Hanauer & Co. paid him over $5,000, on March 3d, 1875. (Dep. Louis Hanauer.)

This was balance due him after sale of his cotton. The accounts of Isaac and M. S. Cohn were kept separate by that firm, and if there was any connection between them, their merchants had never heard of it. M. S. Cohn was a thrifty, active, business man, and prior to his going to Europe, Schoolfield, Hanauer & Co. considered him one among their best customers. (Dep. Louis Hanauer.)

Merchants considered him good. He generally discounted his bills before due, and was considered good by B. Lowenstein & Bro. for bills of $1,500 to $2,000. [Deposition Robert Davis.] At Newport, in fall of 1875, he invested $3,500 of his money in his store, and then established a reputation among wholesale men, which was enviable.

Sam'l C. Davis & Co., Chase & Cabot, and other

first-class houses esteemed him a desirable customer, as he was prompt and reliable in his settlements. [See depositions A. J. Sproule, Jas. C. Cabot, and others.] He made money at Newport, and his business prospered.

One remarkable source of profit to him at Jones' Landing and Newport, was purchasing at auctions, bankrupt stocks, sheriff's sales, etc. One lot of goods which he bought at Jones' Landing, and which at "regular" houses were worth over a thousand dollars, he bought for $350 at Memphis. [Deposition M. S. Cohn, Cross-Int.]

In 1876 he goes to St. Louis, stays there several months, but, after buying goods and sending Brasch to start the Alma Store in July, 1876, he finds it necessary to go back temporarily to Newport, where he remained until March, 1877, when he went permanently to St. Louis. All the proofs show that he was then a prosperous merchant, with reasonable capital and established credit.

Now, the great arguments against the position of defendants are,—

I. That M. S. Cohn had not the capital, $3,700, with which the Fort Smith business was started, and

II. That even, had he that capital, it was impossible to have raised the Fort Smith business to its present proportions without the investment of a greater sum.

We will take these propositions in their order.

The Newport business was running from September, 1875, to June, 1877, before the Fort Smith business was started. The Alma business ran from July, 1876, to August, 1877. Prior to August, 1877, Sam. Brasch had nothing to do with the profits of the Newport business, M. S. Cohn received them all.

Of the Alma business, Brasch received 40 per cent. of the profits, and at the end of thirteen months his interest in the concern amounted to $800. If this re-

presented his profits, (and there is no other account of how he got it) Cohn's profits were $1,200, or 60 per cent.

He had this, and he had the full profits of the Newport business for nearly two years. Did not these two sources yield him $3,700 in two years? M. S. Cohn swears he had the money. No one contradicts him except complainants counsel; and, as before stated, their depositions are not on file.

But counsel, after an elaborate analysis of the situation, show that M. S. Cohn, their own witness, and the only witness who testifies on the subject, was entirely mistaken about the profits of Newport and Alma; and that from these sources he could only have drawn $1,650 in cash, and $700 in goods—in all $2,350.

Suppose we accept this conclusion. We do *not;* but—for the purpose of this argument—suppose that we do. We maintain that the testimony shows him possessed of ample means.

When he went to Europe he had $6,000 cash, and $1,000 in notes. These last were part of the proceeds and remnants of the sale of Jones' Landing business.

Necessarily, this is true, because of the $6,000 in money, Schoolfield, Hanauer & Co. paid him over $5,000, March 3d, 1875. When he returned, he brought $3,500 in money, which he put into the Newport business. He afterwards received, of what he had loaned out in Germany, $950, and $840.72, making $1,790.72; this, of course, in addition to the $3,500 in Newport.

Add to the $1,790.72 the proceeds of the $1,000 in notes, and we have from $2,500, to $2,800, which he had.

Counsel make their own figures, and say that from Newport and Alma he was able to put into Fort Smith business cash, $1,650.

To this add surplus capital, to-wit: $1,790.72, received from Germany after his return, and the proceeds

of his $1,000, in notes, and we have a capital for investment in the Fort Smith business of from $4,000 to $4,400.

This cannot be gainsaid.

They agree, for purposes of argument, that he made at Alma and Newport $1,650.

They cannot deny that he had the balance, $2,500 to $2,800, beside the capital invested at Newport.

Again—see deposition of M. S. Cohn. Answer to 63d interrogatory. "I have drawn out above $4,500 from the Newport store, which I put into Fort Smith store." Answer to 65th. "I commenced drawing out from Newport about a year after that business was started." It will be remembered the Newport store was started in fall of *1875*.

M. S. Cohn then, we take it, had plenty of capital to put $3,700 at Fort Smith; and we proceed to

II. proposition.

Counsel insist, page 32, that the Fort Smith business was not opened until "well on in August, perhaps September, 1877.

They then say: "That is neither forced nor garbled as little as any other position relied upon herein is."

Had counsel not precluded us by the statement [p. 37] that defendant's counsel, with that disposition "for verbal criticism which distinguished his argument on the preliminary hearing for a restraining order, may attempt to criticise," etc., etc., we might venture a few remarks on the above sentence; but we take counsel at their meaning, which is that every other position taken by them is as much forced and garbled as that the Fort Smith business was not opened until "well on in August, perhaps September, 1877."

How monstrous their other positions become!!!

The deposition of Isaac Cohn begins as follows:

"Isaac Cohn, of lawful age, being duly sworn accord-
" ing to law, *in behalf of the plaintiff*, states: 'My name

" is Isaac Cohn; my place of residence is Fort Smith,
" Ark.; my age is thirty-two years; I have lived in Fort
" Smith since the 15th day of June, 1877. I came to
" attend to business for M. S. Cohn, at Fort Smith. The
" said business began when I came here.'"

" *Question 4.* When was the business opened?

" *Answer.* I think it was the 28th day of June, 1877.

" *Q.* How long were you here before the business
" was opened?

" *A.* Ten or twelve days; I came from St. Louis, Mo.
" I have been here constantly ever since?

" *Q. 19.* What stock was on hand *when the business*
" *was begun in 1877?*

" *A.* I think about thirty-five to thirty-seven hundred
" dollars was sent by M. S. Cohn.

" *Q. 20.* When did these goods arrive?

" *A.* It may have been the day or the day before the
" business was opened."

Daniel Harrington, upon cross-examination, says:
" M. S. Cohn was here three or four times last year; am
" not certain; and three times the year before, I think:
" and I think he was here twice in the year 1877: about
" the 1st of August and the latter part of December, or
" the 1st of January of the succeeding year."

M. S. Cohn says:

Q. 72. When was that business established?

A. In *June*, 1877.

Q. 73. Were you at Fort Smith when it was established?

A. At the time it was established, I was here buying goods. A few weeks afterwards, I went there and stayed several days.

Q. 101. Did you carry on business at places other than at Newport and Fort Smith, after returning from Europe?

A. I did have business at Alma, Arkansas, before I opened Fort Smith business; I took part of Alma goods

to Fort Smith, and other part to Newport. I took smaller part to Fort Smith, larger part to Newport. I took to Fort Smith in general merchandise $700, and to Newport about $1200 in general merchandise, etc., etc.

In the face of this testimony they say their conclusions are neither forced nor garbled!

All the witnesses show that the business was opened in June.

The two defendants show, when called by complainant, that, *when* it opened, the business had $3500 to $3700 stock, and that the $700 from Alma, "was added" to that stock in August.

The object of the complainant in putting the opening of the business late in August or in September, is to show that Isaac Cohn was remitting money in quantities to M. S. Cohn, long prior to the time when there was a business here, by, or out of which it could have been produced. How miserably that bold declaration fails when you confront it with the proof!!

So, taking into account the Alma goods, there was, by August, 1877, $4,400 put into the business, and that is just the amount which, by our previous calculation, M. S. Cohn *had* to put in.

Meantime the sums taken in were almost daily remitted to M. S. Cohn.

New goods were bought and sent back, and so the capital was kept in continuous revolution. One hundred dollars is taken in to-day; to-morrow it is sent to M. S. Cohn, and within a week it is reinvested in goods and is on its way back to the store at Fort Smith.

But let us see what this process involves: $100 is taken in to-day. That includes the price paid for the goods and the profits made thereon.

Counsel seem wedded to 25 per cent. as the maximum; so, for the purpose of the illustration, we use it.

Then this $100 is $80 originally invested, and $20 profit. Together with the $80, this $20 is put into goods,

and when these goods are sold, the $100 invested produces $125. Upon the $80 then, we have made $45 profit. Let us then invest the $125 and sell the investment, and our proceeds are $156.25. So, if we can invest our money and turn it over three times in a year, we make nearly 100 per cent.

We recite this for the purpose of showing a very great error into which the counsel have fallen, and we notice it only as showing, so far as it goes, how it is possible that the business has grown to its present proportions from the small dimensions of June, 1877.

Counsel argue everywhere, that the average profits of a mercantile business are 25 per cent *per annum*, and they base their arguments upon the depositions of Sparks and Breen. Now, Sparks and Breen, with all conceivable respect for the misapprehensions of others, say no such thing, and no such idea can be supported.

They do say that 25 per cent., by their experience, is the average profit, but *per annum*—never!

25 per cent. is the average profit *on goods sold.* If one buy a bill of goods to-day, and sells them to-morrow, he makes 25 per cent; if he does not sell them for a year he makes 25 per cent. and in that event he would make 25 per cent. *per annum*, because he had held his goods a year before he sold them.

Let us show from the proof here, how utterly poor Cohn would have been consumed.

He had, including the Alma stock, $4400 in his business. But in order to cover the highest estimates of counsel, suppose he had $6000. Then his 25 per cent. per annum, would give him an income in the way of profits of $1500.

He paid rent - - - - -	$480
Incidental expenses - - - -	200
Dan Harrington - - - -	600
Isaac Cohn, wages and expenses, say	1200
Leave out everything else, Total,	$2480

And this to be paid out of an income of $1500!!

Of course no such thing was ever dreamed of by the witnesses, who are practical business men. They meant simply this: if a merchant sells $10,000 worth of goods in a year his average profit is 25 per cent. or $2500. If he sells $40,000 during the year, his average profit is 25 per cent. or $10,000.

Of course the expense of handling the goods, rent, clerk hire, freights, insurance, etc., etc., are to be paid out of the profits; and that is why the merchant does *not* generally become fabulously rich.

But the estimates of Sparks and Breen are based upon goods bought at *regular* houses, as distinguished from auction and odd lot goods. Sparks never bought any goods at auction or sheriff's sales; and Breen has been in business since 1878, and has only bought $2000 of auction goods.

Upon these auction goods and goods bought at sheriff's sales, the defendants testify that the profits are very large, and Dan Harrington swears that the average profit on the goods, with which they opened, was sixty to seventy-five per cent. He says it is usual for them to receive cheap lots of goods; that they received a great many such lots.

He had clerked in other stores; had clerked for Breen nine years, and says the profits in that business are larger than any he had been connected with. He even is not free from attack. Counsel speak of him as the "*swift* witness, Harrington."

Poor Dan! You have heard from those who know nothing of you, the first imputation of wrong that has found its way to light!

True as the needle to the pole; honest as the breath which first said, "Our Father, which art in heaven," you pursue the even tenor of your way, panoplied by conscious rectitude, and in the full enjoyment of the respect of all who know you as you are!

If then M. S. Cohn invested $3700 in the opening stock, and this stock yielded a profit of sixty per cent., he got for it $5920. The deposition of Isaac Cohn and exhibits, show that he received and remitted money to M. S. Cohn, and paid freights and other expenses amounting to about $5000, by September 15th, 1877, showing sales of about $2000 per month. By September 15th, or within two and one-half months from the time he opened, M. S. Cohn had turned over nearly the whole of the opening stock, and had reinvested the proceeds in other goods. He put in $3700, which brought him from $5500 to $6000, according to the testimony of Harrington.

He put in $700 of goods from Alma, and, it is fair to presume, that he got $700 for them. The proceeds of these, with those of the opening stock, gave him, by October 1st, 1877, at least $6500 in his business.

This is less than fifty per cent. on the goods sold. Pursue this process with half the tireless energy of M. S. Cohn at one, and Isaac Cohn at the other, end of the line, and it is not hard to ascertain how the business grew.

Isaac Cohn worked hard; "did the work of three men," as the testimony shows, and was well paid. He gets $1000 *per annum* and all expenses paid.

These are reasons given by defendants for the growth of the business. How does complainant dispute them?

Turn, sir, to page 31 of his counsel's brief, and you find the response:—"*We deny it! We say that it is simply impossible!*"

"We" are counsel for complainant. Suppose that "We" of counsel for defendants say, "We affirm it. We say it is possible."

It proves nothing except that lawyers *will* differ. The only difference would be that "We," for defendants, have personally observed the business, while "We," for complainant, have not.

But upon the same page is another remarkable

argument. Counsel say, that defendant upon the 1st of May, 1878, purchased auction goods—"*which are spot cash*, $13,076.28."

Leaving aside the feasibility of making these purchases within ten months, with the capital he had, and was continually getting from the Newport store, let us pause to ask who said that auction goods were spot cash? What witness so testified?

Was it Isaac Cohn? He says: "These goods were " sold to M. S. Cohn solely *upon his own credit*, and we " looked solely to him for payment.

* * * * * * *

"The largest portion of these bills were settled by " notes. He gave us one note May 25, 1877, payable " in thirty days, for $962.48; and another dated June " 26, 1877, also payable in thirty days, for $501.30. Both " of these notes were made by Mark S. Cohn, without " indorsement, and were paid at maturity.

"He, also, frequently gave us drafts on his commis- " sion merchant, which were uniformly honored."

[The court knows that commission merchants *do* sometimes advance money for their country customers.]

This does not look like a spot cash transaction.

O. J. Lewis says his firm sold M. S. Cohn goods *on his own credit.*

James D. Faulkner says his firm sold goods to M. S. Cohn upon his individual credit, and looked to him alone for payment.

Why *sell on his credit*, and look to him for payment, if it was *spot cash.* In a case of that kind the party would *look* to the money.

So auction goods were NOT spot cash,—and the argument used loses all its force.

Mark Cohn was right. He knew that the money a merchant makes depends, to a great extent, on how he buys,—and so he has made thousands by buying for far less than other merchants do.

The defendant, when on the stand as plaintiffs' witness, says the results shown *have* been achieved with the capital he mentioned. Counsel say it is an impossibility. Heretofore we have atempted to reply to these facts by showing the record. But, as an offset to that, we desire, with the Court's permission, to make a statement equally foreign to the proof in this case.

On the 1st day of August, 1879, the firm of N. Goldsmith & Co., began business in this city, as hide buyers, with a capital, all told, of $835. By unceasing labor, and by the assistance of their commission merchants, they shipped and sold, within one year from that date, *over 300,000 pounds* of hides and furs!!

At this time, just two years from their beginning, they have three established agencies, and the hide and fur trade of thirteen counties. Counsel would say this is impossible; but as an offset to a gratuitous statement of theirs we state this, a notorious fact in this community.

The case, presented by defendants, is *not* an impossible or an improbable one; and no witness gainsays them in their statements concerning it.

The question whether Isaac Cohn could be held liable for $1,300, which he sent his parents at the time of the break up in Pine Bluff, is one which can do no good to argue here.

When the assignee sues him at law for *that*, it will be time enough to take proof on that subject. The suit here is to confiscate the Fort Smith business of M. S. Cohn, upon the ground that Isaac's money went into it. We have only to try one case at a time.

In this view of the case, the law did not require us, in order to make good our defense, to spend our time and substance in taking testimony to refute the depositions of Bloom, Washer and Franklin; nor does it benefit us now to show the gross falsifications that appear upon the face of their depositions.

In order to make a certainty of the injunction,

Franklin swears, in his affidavit, that he knew all about Isaac Cohn's bankruptcy, being the agent of John S. Adams & Co., and the correspondent of Schawb; and that long after his schedules in bankruptcy were filed, he was in Pine Bluff, and borrowed $100 from witness, and gave him a diamond ring and two candle-sticks as security; and that six months after that he saw Isaac Cohn in St. Louis and talked with him about it.

Now, this whole thing was gotten up to show that the valuable ring and candle-sticks had been omitted from his schedule; that *property* had been held back.

All the proof shows that Isaac Cohn got to St. Louis in March, 1877; that his schedules were filed April 20th, 1877; that he got to Fort Smith, June 15th, 1877; and hasn't been of out of the town since he came here. That he hasn't seen Pine Bluff since more than a month before his schedules were filed.

It is curious to take the affidavits of Bloom and Franklin and place them side by side with their depositions.

IN THE U. S. DISTRICT COURT.

WESTERN DISTRICT OF ARK.

KRAMER - - - - - - - - Plaintiff,

vs.

COHN & COHN, - - - - - Defendants.

ARGUMENT OF ISAAC COHN ON PETITION FOR RECONSIDERATION.

We propose to offer no argument upon plaintiff's petition for reconsideration of the decree herein, as to M. S. Cohn. His liability or exemption depended wholly upon matters of fact presented by the evidence; and as to these, we rest upon the assurance that the Court had *conviction* before pronouncing him guiltless of the fraud attributed to him by the bill.

And so upon the other hand, we do not propose to argue the propriety of the conclusions of the Court as to Isaac Cohn's liability for money improperly or fraudulently withheld from the assignee. We presume that the Court was fully satisfied upon that point.

The single point upon which we rest is the utter inability of a court of chancery to pronounce the decree herein rendered against Isaac Cohn.

I. "Jurisdiction," in its most general sense, is the power residing in a Court to determine judicially a given action, controversy or question, presented to it for decision.

II. *Equity jurisdiction* is the power to hear certain kinds and classes of civil actions, according to the principles of the method and procedure adopted by the Court of Chancery, and to decide them in accordance with the doctrines and rules of equity jurisprudence.

III. Equity has exclusive jurisdiction where the right violated, or the remedy to be given, is purely equitable.

IV. Equity has concurrent jurisdiction where the right violated is legal, and a court of law can, in some sort, or to some degree, afford the same relief as that given by a court of equity.

V. Equity has no jurisdiction, exclusive or concurrent, where the party has a full, adequate and complete remedy at law.

VI. Where a remedy is sought for the violation of a legal right, for which there is ample remedy at law, equity will not entertain the claim, except where the bill states some independent ground of equity jurisdiction; in which case, upon the establishment of the equity, the Court will proceed to administer all relief, whether legal or equitable, to which the parties may be entitled.

VII. But in such case when there is a failure to establish the equity upon which the Court takes jurisdiction, it is without power to administer the relief sought, either equitable or legal.

These statements are axiomatic, and scarcely need the citation of authority in their support. We refer, however, to

I. Pomeroy's Eq. Jur. Secs. 129—130—138—140—146—172—174.

There is, and can be, no claim that this cause fell within the *exclusive* jurisdiction of equity.

The only claim was that it belonged to the *genus* embraced by the concurrent.

It is claimed that equity had jurisdiction.

I. Because there was a fraudulent investment of

money which should have gone to the assignee, in the stock of goods ostensibly owned by M. S. Cohn, and which a decree in chancery was necessary to reach and recover. And

II. Because it involved a fraud of Isaac Cohn's, and equity has jurisdiction in cases of fraud, accident and mistake, concurrently with courts of law.

Let us examine the first:

If fraudulent withholding of the money by Isaac Cohn from his assignee gave such assignee simply a right of action against him for its recovery, then the ground of the equitable jurisdiction of this Court was the allegation that such sum, so withheld, was fraudulently concealed in a business conducted in the name of M. S. Cohn. *That* was disproved, and the Court so decreed; and the rule is:

Where a cause of action, cognizable at law, is entertained in equity upon the ground of some equitable relief sought by the bill, which, it turns out, cannot, for defect of proof or other reason, be granted, the Court is without jurisdiction to proceed further, and should dismiss the bill without prejudice to an action at law for the money.

Nicholl *vs.* Trustees of Huntingdon.
I John. Ch'y. 166.
Russell *vs.* Clarke.
7 Cranch. 69.
I Story Eq. Jur. § 71.
N. B.—Mitchell *vs.* Dowell.
105 U. S. 430.

If then the withholding of this money by Isaac Cohn, gave the assignee simply a right to recover the same by action at law, and if all the allegation of a fraudulent investment of this money in the name of M. S. Cohn was the basis of the exercise of equity jurisdiction, then the

right of the Court to proceed any further, was lost when it discovered the failure of the proof to sustain this jurisdictional allegation.

See Mitchell *vs.* Dowell.
Supra.

But if it be claimed that independent of this, a court of equity has jurisdiction to decree payment of this money, because equity and law have *concurrent* jurisdiction in cases of fraud, let us see whether that claim can be maintained.

Fraud, *per se*, does not give jurisdiction to a court of chancery. It is only where the fraud annihilates the remedy, or renders the same so partial and ineffectual as that a court of law cannot effectuate justice.

It is not *fraud in the creation* of a liability which gives equity jurisdiction, but it is *the effect of fraud* upon *the right* or *remedy* of the party.

Let us illustrate: In Hudson *vs.* Gilliland, 25 Ark. p. 100, our court held that where one steals two mules, sells them and receives the proceeds, the owner might waive the tort and sue in assumpsit for the price received. In either event it is an action to recover money for which the defendant has become responsible by means of his fraud. His fraud in stealing the animal created the liability.

Yet who would, for an instant, dream of filing a bill alleging these facts and attempting by means of a decree in chancery, to recover the value of the stolen animals?

On the other hand, in *Bank of America vs. Pollock*, 4 Edw. 215—a clerk in a bank embezzled money and invested the same in stock in the name of his sisters, who were mere volunteers. Upon a bill filed it was held that equity, upon proof of this, would compel a conveyance of the stock to the parties defrauded. Why?

Because by the allegations of the bill, and from the proof it appeared that the stolen fund had been invested in property, the title to which was in the name of a third person, whereby the remedy of the person to whom the right of action accrued, was so hindered and obscured, as to make the remedy at law insufficient to effectuate justice.

Here was a case of concurrent jurisdiction. The injured party had his action at law to recover judgment; but the clerk having invested the money in the name of another party, equity also had jurisdiction to uncover the fraud and compel a subjection of the property purchased to the payment of the debt.

In this case, suppose upon investigation it had been shown by the proof, that although the clerk stole the money, he had not invested it in the property described in the bill, but that such property had come to his sisters by gift from an ancestor—there the ground upon which equity took jurisdiction would have been shown not to exist, and the Court would have been powerless to ascertain the amount stolen by the defendant, and give a personal decree against him for it.

So, in the case at bar, the Court finds that Isaac Cohn defrauded his creditors by reserving from his assignee a large sum of money; that Isaac Cohn did *not* invest the money so secreted in the business at Fort Smith, and that the claim of M. S. Cohn as owner thereof is not a mere pretense or sham.

Hence, the ground upon which equity took jurisdiction is shown not to exist, and the Court has no power to go further in the matter.

Again, equity cannot take jurisdiction here for the purpose of *declaring a trust*, because equity can only declare a trust where the trust fund can be identified, and is, in whole or part, within the territorial jurisdiction of the Court,

I. Perry on Trusts, § 128.

Upon the proposition that equity has no jurisdiction, on account of the fraud found here, we cite

Huff *vs.* Ripley, *et al.*
58 Geo. 12.
Youngblood *vs.* Youngblood,
54 Ala. 486.
Dugan *vs.* Ceereton,
1 Ark. 31.
Bay City Bridge Co. *vs.* Van Etten,
36 Mich. 210., and other cases cited in note 2, to section 178.
I. Pomeroy's Equity Jur., and see also said section.

So, in this case, the withholding of the money gave a right of action at law to the assignee, but the fact that Cohn's pecuniary condition may render fruition uncertain, does not change the character of his liability, or the forum in which it is to be tried.

We submit that the Court's zeal in attempting to stamp fraud where it conceived it to exist, has led it beyond the sphere allotted to the chancellor.

It feels that an opportunity has been afforded Isaac Cohn to make explanations which he has failed to make. We remind the Court that in our original argument we stated that we were *defending* not *vindicating* our clients.

We knew that M. S. Cohn and the business could not be held. We humbly believed that when the ground upon which the court of equity took jurisdiction was shown not to exist, no merely legal relief could be admininistered for want of jurisdiction.

And this proposition we think we have demonstrated.

Respectfully submitted,

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